

information, including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

**(e) Authority to issue warnings**

The Secretary may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential risks to the supply chain as appropriate. In issuing a warning, the Secretary shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted supply chain security information that forms the basis for the warning; and

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(Pub. L. 109-347, title II, §236, Oct. 13, 2006, 120 Stat. 1919.)

**SUBCHAPTER III—ADMINISTRATION**

**§ 1001. Designation of liaison office of Department of State**

The Secretary of State shall designate a liaison office within the Department of State to assist the Secretary, as appropriate, in negotiating cargo security-related international agreements.

(Pub. L. 109-347, title III, §301(b), Oct. 13, 2006, 120 Stat. 1920.)

**RULE OF CONSTRUCTION**

Nothing in this section to be construed to affect the authorities, functions, or capabilities of the Coast Guard to perform its missions or the requirement under section 468 of this title that those authorities, functions, and capabilities be maintained intact, see section 301(c) of Pub. L. 109-347, set out as a note under section 239 of this title.

**§ 1002. Homeland Security Science and Technology Advisory Committee**

The Under Secretary for Science and Technology shall utilize the Homeland Security Science and Technology Advisory Committee, as appropriate, to provide outside expertise in advancing cargo security technology.

(Pub. L. 109-347, title III, §302(c), Oct. 13, 2006, 120 Stat. 1921.)

**§ 1003. Research, development, test, and evaluation efforts in furtherance of maritime and cargo security**

**(a) In general**

The Secretary shall—

(1) direct research, development, testing, and evaluation efforts in furtherance of maritime and cargo security;

(2) coordinate with public and private sector entities to develop and test technologies, and process innovations in furtherance of these objectives; and

(3) evaluate such technologies.

**(b) Coordination**

The Secretary, in coordination with the Under Secretary for Science and Technology, the As-

sistant Secretary for Policy, the Commandant of the Coast Guard, the Director for Domestic Nuclear Detection, the Chief Financial Officer, and the heads of other appropriate offices or entities of the Department, shall ensure that—

(1) research, development, testing, and evaluation efforts funded by the Department in furtherance of maritime and cargo security are coordinated within the Department and with other appropriate Federal agencies to avoid duplication of efforts; and

(2) the results of such efforts are shared throughout the Department and with other Federal, State, and local agencies, as appropriate.

(Pub. L. 109-347, title III, §303, Oct. 13, 2006, 120 Stat. 1921.)

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**SUBCHAPTER I—TRANSPORTATION SECURITY PLANNING AND INFORMATION SHARING**

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#### SUBCHAPTER I—TRANSPORTATION SECURITY PLANNING AND INFORMATION SHARING

##### § 1101. Definitions

For purposes of this subchapter, the following terms apply:

##### (1) Department

The term “Department” means the Department of Homeland Security.

##### (2) Secretary

The term “Secretary” means the Secretary of Homeland Security.

(Pub. L. 110–53, title XII, § 1201, Aug. 3, 2007, 121 Stat. 381.)

##### REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title XII of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 381, which enacted this subchapter, amended section 114 of Title 49, Transportation, and enacted provisions set out as a note under section 114 of Title 49. For complete classification of title XII to the Code, see Tables.

##### SHORT TITLE

Pub. L. 110–53, title XIV, § 1401, Aug. 3, 2007, 121 Stat. 400, provided that: “This title [enacting subchapter III of this chapter] may be cited as the ‘National Transit Systems Security Act of 2007.’”

##### EX. ORD. NO. 13416. STRENGTHENING SURFACE TRANSPORTATION SECURITY

Ex. Ord. No. 13416, Dec. 5, 2006, 71 F.R. 71033, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the security of the Nation’s surface transportation systems and thereby enhance the protection of the people, property, and territory of the United States of America against terrorist attacks, it is hereby ordered as follows:

SECTION 1. *Policy.* The security of our Nation’s surface transportation systems is a national priority, vital to our economy, and essential to the security of our Nation. Federal, State, local, and tribal governments, the private sector, and the public share responsibility for the security of surface transportation. It is the policy of the United States to protect the people, property, and territory of the United States by facilitating the implementation of a comprehensive, coordinated, and efficient security program to protect surface transportation systems within and adjacent to the United States against terrorist attacks.

SEC. 2. *Definitions.* For purposes of this order:

(a) “agencies” means those executive departments enumerated in 5 U.S.C. 101, independent establishments as defined by 5 U.S.C. 104(1), government corporations as defined by 5 U.S.C. 103(1), and the United States Postal Service;

(b) “Secretary” means the Secretary of Homeland Security;

(c) “security guideline” means any security-related guidance that the Secretary recommends, for implementation on a voluntary basis, to enhance the security of surface transportation;

(d) “security requirement” means any “regulatory action” as defined in section 3 of Executive Order 12866 of September 30, 1993, as amended (Regulatory Planning and Review), including security directives when appropriate, to implement measures to enhance the security of surface transportation;

(e) “surface transportation modes” means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States, but does not include electric grids; and

(f) “surface transportation” means any conveyance of people, goods, or commodities using one or more surface transportation modes.

SEC. 3. *Functions of the Secretary of Homeland Security.* The Secretary is the principal Federal official responsible for infrastructure protection activities for surface transportation. To implement the policy set forth in section 1 of this order, the Secretary shall, consistent with the National Infrastructure Protection Plan (NIPP), in coordination with the Secretary of Transportation, and in consultation with the heads of other relevant agencies:

(a) assess the security of each surface transportation mode and evaluate the effectiveness and efficiency of current Federal Government surface transportation security initiatives;

(b) building upon current security initiatives, not later than December 31, 2006, develop a comprehensive transportation systems sector specific plan, as defined in the NIPP;

(c) not later than 90 days after the comprehensive transportation systems sector specific plan is completed, develop an annex to such plan that addresses each surface transportation mode, which shall also include, at a minimum—

(i) an identification of existing security guidelines and security requirements and any security gaps, a description of how the transportation systems sector specific plan will be implemented for such mode, and the respective roles, responsibilities, and authorities of Federal, State, local, and tribal governments and the private sector;

(ii) schedules and protocols for annual reviews of the effectiveness of surface transportation security-related information sharing mechanisms in bringing about the timely exchange of surface transportation security in-

formation among Federal, State, local, and tribal governments and the private sector, as appropriate; and

(iii) a process for assessing (A) compliance with any security guidelines and security requirements issued by the Secretary for surface transportation, and (B) the need for revision of such guidelines and requirements to ensure their continuing effectiveness;

(d) in consultation with State, local, and tribal government officials and the private sector, not later than 180 days after the date of this order, identify surface transportation modes, or components thereof, that are subject to high risk of terrorist attack, draft appropriate security guidelines or security requirements to mitigate such risks, and ensure that, prior to their issuance, draft security requirements are transmitted to the Office of Management and Budget for review in accordance with Executive Order 12866 and draft security guidelines receive appropriate interagency review;

(e) develop, implement, and lead a process, in collaboration with other agencies, State, local, and tribal governments, and the private sector, as appropriate, to coordinate research, development, testing, and evaluation of technologies (including alternative uses for commercial off-the-shelf technologies and products) relating to the protection of surface transportation, including—

(i) determining product and technology needs to inform the requirements for and prioritization of research, development, testing, and evaluation, based on the security guidelines and security requirements developed pursuant to subsection (c) of this section and evolving terrorist threats to the security of surface transportation;

(ii) collecting information on existing and planned research, development, testing, and evaluation efforts; and

(iii) not later than 180 days after the date of this order, consistent with section 313 of the Homeland Security Act of 2002, as amended (6 U.S.C. 193), establishing and making available to Federal, State, local, and tribal government entities, and private sector owners and operators of surface transportation systems, lists of available technologies and products relating to the protection of surface transportation; and

(f) use security grants authorized by law to assist in implementing security requirements and security guidelines issued pursuant to law and consistent with subsection (c) of this section.

**SEC. 4. Duties of Heads of Other Agencies.** Heads of agencies, as appropriate, shall provide such assistance and information as the Secretary may request to implement this order.

**SEC. 5. General Provisions.** This order:

(a) shall be implemented consistent with applicable law and the authorities of agencies, or heads of agencies, vested by law, and subject to the availability of appropriations;

(b) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals; and

(c) is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

## **§ 1102. National Domestic Preparedness Consortium**

### **(a) In general**

The Secretary is authorized to establish, operate, and maintain a National Domestic Preparedness Consortium within the Department.

### **(b) Members**

Members of the National Domestic Preparedness Consortium shall consist of—

(1) the Center for Domestic Preparedness;

(2) the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology;

(3) the National Center for Biomedical Research and Training, Louisiana State University;

(4) the National Emergency Response and Rescue Training Center, Texas A&M University;

(5) the National Exercise, Test, and Training Center, Nevada Test Site;

(6) the Transportation Technology Center, Incorporated, in Pueblo, Colorado; and

(7) the National Disaster Preparedness Training Center, University of Hawaii.

### **(c) Duties**

The National Domestic Preparedness Consortium shall identify, develop, test, and deliver training to State, local, and tribal emergency response providers, provide on-site and mobile training at the performance and management and planning levels, and facilitate the delivery of training by the training partners of the Department.

### **(d) Authorization of appropriations**

There are authorized to be appropriated to the Secretary—

(1) for the Center for Domestic Preparedness—

(A) \$57,000,000 for fiscal year 2008;

(B) \$60,000,000 for fiscal year 2009;

(C) \$63,000,000 for fiscal year 2010; and

(D) \$66,000,000 for fiscal year 2011; and

(2) for the National Energetic Materials Research and Testing Center, the National Center for Biomedical Research and Training, the National Emergency Response and Rescue Training Center, the National Exercise, Test, and Training Center, the Transportation Technology Center, Incorporated, and the National Disaster Preparedness Training Center each—

(A) \$22,000,000 for fiscal year 2008;

(B) \$23,000,000 for fiscal year 2009;

(C) \$24,000,000 for fiscal year 2010; and

(D) \$25,500,000 for fiscal year 2011.

### **(e) Savings provision**

From the amounts appropriated pursuant to this section, the Secretary shall ensure that future amounts provided to each of the following entities are not less than the amounts provided to each such entity for participation in the Consortium in fiscal year 2007—

(1) the Center for Domestic Preparedness;

(2) the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology;

(3) the National Center for Biomedical Research and Training, Louisiana State University;

(4) the National Emergency Response and Rescue Training Center, Texas A&M University; and

(5) the National Exercise, Test, and Training Center, Nevada Test Site.

(Pub. L. 110-53, title XII, §1204, Aug. 3, 2007, 121 Stat. 386.)

### **§ 1103. National Transportation Security Center of Excellence**

#### **(a) Establishment**

The Secretary shall establish a National Transportation Security Center of Excellence to conduct research and education activities, and to develop or provide professional security training, including the training of transportation employees and transportation professionals.

#### **(b) Designation**

The Secretary shall select one of the institutions identified in subsection (c) as the lead institution responsible for coordinating the National Transportation Security Center of Excellence.

#### **(c) Member institutions**

##### **(1) Consortium**

The institution of higher education selected under subsection (b) shall execute agreements with the other institutions of higher education identified in this subsection and other institutions designated by the Secretary to develop a consortium to assist in accomplishing the goals of the Center.

##### **(2) Members**

The National Transportation Security Center of Excellence shall consist of—

- (A) Texas Southern University in Houston, Texas;
- (B) the National Transit Institute at Rutgers, The State University of New Jersey;
- (C) Tougaloo College;
- (D) the Connecticut Transportation Institute at the University of Connecticut;
- (E) the Homeland Security Management Institute, Long Island University;
- (F) the Mack-Blackwell National Rural Transportation Study Center at the University of Arkansas; and
- (G) any additional institutions or facilities designated by the Secretary.

##### **(3) Certain inclusions**

To the extent practicable, the Secretary shall ensure that an appropriate number of any additional consortium colleges or universities designated by the Secretary under this subsection are Historically Black Colleges and Universities, Hispanic Serving Institutions, and Indian Tribally Controlled Colleges and Universities.

#### **(d) Authorization of appropriations**

There are authorized to be appropriated to carry out this section—

- (1) \$18,000,000 for fiscal year 2008;
- (2) \$18,000,000 for fiscal year 2009;
- (3) \$18,000,000 for fiscal year 2010; and
- (4) \$18,000,000 for fiscal year 2011.

(Pub. L. 110-53, title XII, §1205, Aug. 3, 2007, 121 Stat. 387.)

### **§ 1104. Immunity for reports of suspected terrorist activity or suspicious behavior and response**

#### **(a) Immunity for reports of suspected terrorist activity or suspicious behavior**

##### **(1) In general**

Any person who, in good faith and based on objectively reasonable suspicion, makes, or causes to be made, a voluntary report of covered activity to an authorized official shall be immune from civil liability under Federal, State, and local law for such report.

##### **(2) False reports**

Paragraph (1) shall not apply to any report that the person knew to be false or was made with reckless disregard for the truth at the time that person made that report.

#### **(b) Immunity for response**

##### **(1) In general**

Any authorized official who observes, or receives a report of, covered activity and takes reasonable action in good faith to respond to such activity shall have qualified immunity from civil liability for such action, consistent with applicable law in the relevant jurisdiction. An authorized official as defined by subsection (d)(1)(A) not entitled to assert the defense of qualified immunity shall nevertheless be immune from civil liability under Federal, State, and local law if such authorized official takes reasonable action, in good faith, to respond to the reported activity.

##### **(2) Savings clause**

Nothing in this subsection shall affect the ability of any authorized official to assert any defense, privilege, or immunity that would otherwise be available, and this subsection shall not be construed as affecting any such defense, privilege, or immunity.

#### **(c) Attorney fees and costs**

Any person or authorized official found to be immune from civil liability under this section shall be entitled to recover from the plaintiff all reasonable costs and attorney fees.

#### **(d) Definitions**

In this section:

##### **(1) Authorized official**

The term “authorized official” means—

(A) any employee or agent of a passenger transportation system or other person with responsibilities relating to the security of such systems;

(B) any officer, employee, or agent of the Department of Homeland Security, the Department of Transportation, or the Department of Justice with responsibilities relating to the security of passenger transportation systems; or

(C) any Federal, State, or local law enforcement officer.

##### **(2) Covered activity**

The term “covered activity” means any suspicious transaction, activity, or occurrence that involves, or is directed against, a passenger transportation system or vehicle or its

passengers indicating that an individual may be engaging, or preparing to engage, in a violation of law relating to—

- (A) a threat to a passenger transportation system or passenger safety or security; or
- (B) an act of terrorism (as that term is defined in section 3077 of title 18).

### (3) Passenger transportation

The term “passenger transportation” means—

- (A) public transportation, as defined in section 5302 of title 49;
- (B) over-the-road bus transportation, as defined in subchapter IV, and school bus transportation;
- (C) intercity passenger rail<sup>1</sup> transportation<sup>2</sup> as defined in section 24102 of title 49;
- (D) the transportation of passengers onboard a passenger vessel<sup>2</sup> as defined in section 2101 of title 46;
- (E) other regularly scheduled waterborne transportation service of passengers by vessel of at least 20 gross tons; and
- (F) air transportation, as defined in section 40102 of title 49, of passengers.

### (4) Passenger transportation system

The term “passenger transportation system” means an entity or entities organized to provide passenger transportation using vehicles, including the infrastructure used to provide such transportation.

### (5) Vehicle

The term “vehicle” has the meaning given to that term in section 1992(16)<sup>3</sup> of title 18.

### (e) Effective date

This section shall take effect on October 1, 2006, and shall apply to all activities and claims occurring on or after such date.

(Pub. L. 110–53, title XII, § 1206, Aug. 3, 2007, 121 Stat. 388.)

#### REFERENCES IN TEXT

Subchapter IV, referred to in subsec. (d)(3)(B), was in the original “title XV of this Act”, meaning title XV of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 422, which is classified principally to subchapter IV (§ 1151 et seq.) of this chapter. For complete classification of title XV to the Code, see References in Text note set out under section 1151 of this title and Tables.

## SUBCHAPTER II—TRANSPORTATION SECURITY ENHANCEMENTS

### § 1111. Definitions

For purposes of this subchapter, the following terms apply:

#### (1) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Commerce, Science, and Transportation, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the

Committee on Transportation and Infrastructure of the House of Representatives.

#### (2) Department

The term “Department” means the Department of Homeland Security.

#### (3) Secretary

The term “Secretary” means the Secretary of Homeland Security.

#### (4) State

The term “State” means any one of the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

#### (5) Terrorism

The term “terrorism” has the meaning that term has in section 101 of this title.

#### (6) United States

The term “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(Pub. L. 110–53, title XIII, § 1301, Aug. 3, 2007, 121 Stat. 389.)

#### REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title XIII of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 389, which enacted this subchapter and amended section 70105 of Title 46, Shipping, and sections 114 and 46301 of Title 49, Transportation. For complete classification of title XIII to the Code, see Tables.

### § 1112. Authorization of Visible Intermodal Prevention and Response teams

#### (a) In general

The Secretary, acting through the Administrator of the Transportation Security Administration, may develop Visible Intermodal Prevention and Response (referred to in this section as “VIPR”) teams to augment the security of any mode of transportation at any location within the United States. In forming a VIPR team, the Secretary—

(1) may use any asset of the Department, including Federal air marshals, surface transportation security inspectors, canine detection teams, and advanced screening technology;

(2) may determine when a VIPR team shall be deployed, as well as the duration of the deployment;

(3) shall, prior to and during the deployment, consult with local security and law enforcement officials in the jurisdiction where the VIPR team is or will be deployed, to develop and agree upon the appropriate operational protocols and provide relevant information about the mission of the VIPR team, as appropriate; and

(4) shall, prior to and during the deployment, consult with all transportation entities directly affected by the deployment of a VIPR team, as appropriate, including railroad carriers, air carriers, airport owners, over-the-

<sup>1</sup> So in original. Probably should be “intercity rail passenger”.

<sup>2</sup> So in original. Probably should be followed by a comma.

<sup>3</sup> So in original. Probably should be section “1992(d)(16)”.

road bus operators and terminal owners and operators, motor carriers, public transportation agencies, owners or operators of highways, port operators and facility owners, vessel owners and operators and pipeline operators.

**(b) Authorization of appropriations**

There are authorized to be appropriated to the Secretary to carry out this section such sums as necessary for fiscal years 2007 through 2011.

(Pub. L. 110–53, title XIII, § 1303, Aug. 3, 2007, 121 Stat. 392.)

**§ 1113. Surface transportation security inspectors**

**(a) In general**

The Secretary, acting through the Administrator of the Transportation Security Administration, is authorized to train, employ, and utilize surface transportation security inspectors.

**(b) Mission**

The Secretary shall use surface transportation security inspectors to assist surface transportation carriers, operators, owners, entities, and facilities to enhance their security against terrorist attack and other security threats and to assist the Secretary in enforcing applicable surface transportation security regulations and directives.

**(c) Authorities**

Surface transportation security inspectors employed pursuant to this section shall be authorized such powers and delegated such responsibilities as the Secretary determines appropriate, subject to subsection (e).

**(d) Requirements**

The Secretary shall require that surface transportation security inspectors have relevant transportation experience and other security and inspection qualifications, as determined appropriate.

**(e) Limitations**

**(1) Inspectors**

Surface transportation inspectors shall be prohibited from issuing fines to public transportation agencies, as defined in subchapter III, for violations of the Department's regulations or orders except through the process described in paragraph (2).

**(2) Civil penalties**

The Secretary shall be prohibited from assessing civil penalties against public transportation agencies, as defined in subchapter III, for violations of the Department's regulations or orders, except in accordance with the following:

(A) In the case of a public transportation agency that is found to be in violation of a regulation or order issued by the Secretary, the Secretary shall seek correction of the violation through a written notice to the public transportation agency and shall give the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to the Secretary.

(B) If the public transportation agency does not correct the violation or propose an

alternative means of compliance acceptable to the Secretary within a reasonable time period that is specified in the written notice, the Secretary may take any action authorized in section 114 of title 49.

**(3) Limitation on Secretary**

The Secretary shall not initiate civil enforcement actions for violations of administrative and procedural requirements pertaining to the application for, and expenditure of, funds awarded under transportation security grant programs under this Act.

**(f) Number of inspectors**

The Secretary shall employ up to a total of—

(1) 100 surface transportation security inspectors in fiscal year 2007;

(2) 150 surface transportation security inspectors in fiscal year 2008;

(3) 175 surface transportation security inspectors in fiscal year 2009; and

(4) 200 surface transportation security inspectors in fiscal years 2010 and 2011.

**(g) Coordination**

The Secretary shall ensure that the mission of the surface transportation security inspectors is consistent with any relevant risk assessments required by this Act or completed by the Department, the modal plans required under section 114(t)<sup>1</sup> of title 49, the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities, dated September 28, 2004, and any and all subsequent annexes to this Memorandum of Understanding, and other relevant documents setting forth the Department's transportation security strategy, as appropriate.

**(h) Consultation**

The Secretary shall periodically consult with the surface transportation entities which are or may be inspected by the surface transportation security inspectors, including, as appropriate, railroad carriers, over-the-road bus operators and terminal owners and operators, motor carriers, public transportation agencies, owners or operators of highways, and pipeline operators on—

(1) the inspectors' duties, responsibilities, authorities, and mission; and

(2) strategies to improve transportation security and to ensure compliance with transportation security requirements.

**(i) Report**

Not later than September 30, 2008, the Department of Homeland Security Inspector General shall transmit a report to the appropriate congressional committees on the performance and effectiveness of surface transportation security inspectors, whether there is a need for additional inspectors, and other recommendations.

**(j) Authorization of appropriations**

There are authorized to be appropriated to the Secretary to carry out this section—

(1) \$11,400,000 for fiscal year 2007;

(2) \$17,100,000 for fiscal year 2008;

(3) \$19,950,000 for fiscal year 2009;

<sup>1</sup> See References in Text note below.

- (4) \$22,800,000 for fiscal year 2010; and
- (5) \$22,800,000 for fiscal year 2011.

(Pub. L. 110–53, title XIII, § 1304, Aug. 3, 2007, 121 Stat. 393.)

#### REFERENCES IN TEXT

This Act, referred to in subsecs. (e)(3) and (g), is Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

Section 114(t) of title 49, referred to in subsec. (g), was redesignated section 114(s) of title 49 by Pub. L. 110–161, div. E, title V, § 568(a), Dec. 26, 2007, 121 Stat. 2092.

### § 1114. Surface transportation security technology information sharing

#### (a) In general

##### (1) Information sharing

The Secretary, in consultation with the Secretary of Transportation, shall establish a program to provide appropriate information that the Department has gathered or developed on the performance, use, and testing of technologies that may be used to enhance railroad, public transportation, and surface transportation security to surface transportation entities, including railroad carriers, over-the-road bus operators and terminal owners and operators, motor carriers, public transportation agencies, owners or operators of highways, pipeline operators, and State, local, and tribal governments that provide security assistance to such entities.

##### (2) Designation of qualified antiterrorism technologies

The Secretary shall include in such information provided in paragraph (1) whether the technology is designated as a qualified antiterrorism technology under the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (Public Law 107–296) [6 U.S.C. 441 et seq.], as appropriate.

#### (b) Purpose

The purpose of the program is to assist eligible grant recipients under this Act and others, as appropriate, to purchase and use the best technology and equipment available to meet the security needs of the Nation's surface transportation system.

#### (c) Coordination

The Secretary shall ensure that the program established under this section makes use of and is consistent with other Department technology testing, information sharing, evaluation, and standards-setting programs, as appropriate.

(Pub. L. 110–53, title XIII, § 1305, Aug. 3, 2007, 121 Stat. 394.)

#### REFERENCES IN TEXT

The Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, referred to in subsec. (a)(2), is subtitle G (§§ 861–865) of title VIII of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2238, also known as the SAFETY Act, which is classified generally to part G (§ 441 et

seq.) of subchapter VIII of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

This Act, referred to in subsecs. (b), is Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

### § 1115. TSA personnel limitations

Any statutory limitation on the number of employees in the Transportation Security Administration does not apply to employees carrying out this chapter.

(Pub. L. 110–53, title XIII, § 1306, Aug. 3, 2007, 121 Stat. 395.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to titles XII, XIII, XIV, and XV of Pub. L. 110–53, which enacted this chapter, amended section 1992 of Title 18, Crimes and Criminal Procedure, section 70105 of Title 46, Shipping, and sections 114, 5103a, 14504, 20106, 20109, 24301, 28101, 31105, and 46301 of Title 49, Transportation, enacted provisions set out as notes under section 1101 of this title and sections 114, 13908, and 14504 of Title 49, and amended provisions set out as a note under section 14504 of Title 49. For complete classification of titles XII to XV to the Code, see Tables.

### § 1116. National explosives detection canine team training program

#### (a) Definitions

For purposes of this section, the term “explosives detection canine team” means a canine and a canine handler that are trained to detect explosives, radiological materials, chemical, nuclear or biological weapons, or other threats as defined by the Secretary.

#### (b) In general

##### (1) Increased capacity

Not later than 180 days after August 3, 2007, the Secretary of Homeland Security shall—

(A) begin to increase the number of explosives detection canine teams certified by the Transportation Security Administration for the purposes of transportation-related security by up to 200 canine teams annually by the end of 2010; and

(B) encourage State, local, and tribal governments and private owners of high-risk transportation facilities to strengthen security through the use of highly trained explosives detection canine teams.

##### (2) Explosives detection canine teams

The Secretary of Homeland Security shall increase the number of explosives detection canine teams by—

(A) using the Transportation Security Administration's National Explosives Detection Canine Team Training Center, including expanding and upgrading existing facilities, procuring and breeding additional canines, and increasing staffing and oversight commensurate with the increased training and deployment capabilities;

(B) partnering with other Federal, State, or local agencies, nonprofit organizations, universities, or the private sector to increase the training capacity for canine detection teams;

(C) procuring explosives detection canines trained by nonprofit organizations, universities, or the private sector provided they are trained in a manner consistent with the standards and requirements developed pursuant to subsection (c) or other criteria developed by the Secretary; or

(D) a combination of subparagraphs (A), (B), and (C), as appropriate.

**(c) Standards for explosives detection canine teams**

**(1) In general**

Based on the feasibility in meeting the ongoing demand for quality explosives detection canine teams, the Secretary shall establish criteria, including canine training curricula, performance standards, and other requirements approved by the Transportation Security Administration necessary to ensure that explosives detection canine teams trained by nonprofit organizations, universities, and private sector entities are adequately trained and maintained.

**(2) Expansion**

In developing and implementing such curriculum, performance standards, and other requirements, the Secretary shall—

(A) coordinate with key stakeholders, including international, Federal, State, and local officials, and private sector and academic entities to develop best practice guidelines for such a standardized program, as appropriate;

(B) require that explosives detection canine teams trained by nonprofit organizations, universities, or private sector entities that are used or made available by the Secretary be trained consistent with specific training criteria developed by the Secretary; and

(C) review the status of the private sector programs on at least an annual basis to ensure compliance with training curricula, performance standards, and other requirements.

**(d) Deployment**

The Secretary shall—

(1) use the additional explosives detection canine teams as part of the Department's efforts to strengthen security across the Nation's transportation network, and may use the canine teams on a more limited basis to support other homeland security missions, as determined appropriate by the Secretary;

(2) make available explosives detection canine teams to all modes of transportation, for high-risk areas or to address specific threats, on an as-needed basis and as otherwise determined appropriate by the Secretary;

(3) encourage, but not require, any transportation facility or system to deploy TSA-certified explosives detection canine teams developed under this section; and

(4) consider specific needs and training requirements for explosives detection canine

teams to be deployed across the Nation's transportation network, including in venues of multiple modes of transportation, as appropriate.

**(e) Canine procurement**

The Secretary, acting through the Administrator of the Transportation Security Administration, shall work to ensure that explosives detection canine teams are procured as efficiently as possible and at the best price, while maintaining the needed level of quality, including, if appropriate, through increased domestic breeding.

**(f) Study**

Not later than 1 year after August 3, 2007, the Comptroller General shall report to the appropriate congressional committees on the utilization of explosives detection canine teams to strengthen security and the capacity of the national explosive detection canine team program.

**(g) Authorization**

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section for fiscal years 2007 through 2011.

(Pub. L. 110–53, title XIII, § 1307, Aug. 3, 2007, 121 Stat. 395.)

**§ 1117. Roles of the Department of Homeland Security and the Department of Transportation**

The Secretary of Homeland Security is the principal Federal official responsible for transportation security. The roles and responsibilities of the Department of Homeland Security and the Department of Transportation in carrying out this chapter are the roles and responsibilities of such Departments pursuant to the Aviation and Transportation Security Act (Public Law 107–71); the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); the National Infrastructure Protection Plan required by Homeland Security Presidential Directive–7; The<sup>1</sup> Homeland Security Act of 2002 [6 U.S.C. 101 et seq.]; The<sup>1</sup> National Response Plan; Executive Order No. 13416: Strengthening Surface Transportation Security, dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities, dated September 28, 2004, and any and all subsequent annexes to this Memorandum of Understanding; and any other relevant agreements between the two Departments.

(Pub. L. 110–53, title XIII, § 1310, Aug. 3, 2007, 121 Stat. 400.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original a reference to titles XII, XIII, XIV, and XV of Pub. L. 110–53, which enacted this chapter, amended section 1992 of Title 18, Crimes and Criminal Procedure, section 70105 of Title 46, Shipping, and sections 114, 5103a, 14504, 20106, 20109, 24301, 28101, 31105, and 46301 of Title 49, Transportation, enacted provisions set out as notes under section 1101 of this title and sections 114, 13908, and 14504 of Title 49, and amended provisions set out as a note under section 14504 of Title 49. For complete

<sup>1</sup> So in original. Probably should not be capitalized.



classification of titles XII to XV to the Code, see Tables.

The Aviation and Transportation Security Act, referred to in text, is Pub. L. 107-71, Nov. 19, 2001, 115 Stat. 597. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 40101 of Title 49, Transportation, and Tables.

The Intelligence Reform and Terrorism Prevention Act of 2004, referred to in text, is Pub. L. 108-458, Dec. 17, 2004, 118 Stat. 3638. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 401 of Title 50, War and National Defense, and Tables.

The Homeland Security Act of 2002, referred to in text, is Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, which is classified principally to chapter 1 (§101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

Executive Order No. 13416, referred to in text, is set out as a note under section 1101 of this title.

### SUBCHAPTER III—PUBLIC TRANSPORTATION SECURITY

#### § 1131. Definitions

For purposes of this subchapter, the following terms apply:

**(1) Appropriate congressional committees**

The term “appropriate congressional committees” means the Committee on Banking, Housing, and Urban Affairs, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.

**(2) Department**

The term “Department” means the Department of Homeland Security.

**(3) Disadvantaged businesses concerns**

The term “disadvantaged business concerns” means small businesses that are owned and controlled by socially and economically disadvantaged individuals as defined in section<sup>1</sup> 124, title 13, Code of Federal Regulations.

**(4) Frontline employee**

The term “frontline employee” means an employee of a public transportation agency who is a transit vehicle driver or operator, dispatcher, maintenance and maintenance support employee, station attendant, customer service employee, security employee, or transit police, or any other employee who has direct contact with riders on a regular basis, and any other employee of a public transportation agency that the Secretary determines should receive security training under section 1137 of this title.

**(5) Public transportation agency**

The term “public transportation agency” means a publicly owned operator of public transportation eligible to receive Federal assistance under chapter 53 of title 49.

**(6) Secretary**

The term “Secretary” means the Secretary of Homeland Security.

(Pub. L. 110-53, title XIV, §1402, Aug. 3, 2007, 121 Stat. 400.)

#### SHORT TITLE

For short title of this subchapter as the “National Transit Systems Security Act of 2007”, see section 1401 of Pub. L. 110-53, set out as a note under section 1101 of this title.

#### § 1132. Findings

Congress finds that—

(1) 182 public transportation systems throughout the world have been primary targets of terrorist attacks;

(2) more than 6,000 public transportation agencies operate in the United States;

(3) people use public transportation vehicles 33,000,000 times each day;

(4) the Federal Transit Administration has invested \$93,800,000,000 since 1992 for construction and improvements;

(5) the Federal investment in transit security has been insufficient; and

(6) greater Federal investment in transit security improvements per passenger boarding is necessary to better protect the American people, given transit’s vital importance in creating mobility and promoting our Nation’s economy.

(Pub. L. 110-53, title XIV, §1403, Aug. 3, 2007, 121 Stat. 401.)

#### § 1133. National Strategy for Public Transportation Security

##### (a) National Strategy

Not later than 9 months after August 3, 2007, and based upon the previous and ongoing security assessments conducted by the Department and the Department of Transportation, the Secretary, consistent with and as required by section 114(t)<sup>1</sup> of title 49, shall develop and implement the modal plan for public transportation, entitled the “National Strategy for Public Transportation Security”.

##### (b) Purpose

##### (1) Guidelines

In developing the National Strategy for Public Transportation Security, the Secretary shall establish guidelines for public transportation security that—

(A) minimize security threats to public transportation systems; and

(B) maximize the abilities of public transportation systems to mitigate damage resulting from terrorist attack or other major incident.

##### (2) Assessments and consultations

In developing the National Strategy for Public Transportation Security, the Secretary shall—

(A) use established and ongoing public transportation security assessments as the basis of the National Strategy for Public Transportation Security; and

(B) consult with all relevant stakeholders, including public transportation agencies,

<sup>1</sup> So in original. Probably should be “part”.

<sup>1</sup> See References in Text note below.

nonprofit labor organizations representing public transportation employees, emergency responders, public safety officials, and other relevant parties.

**(c) Contents**

In the National Strategy for Public Transportation Security, the Secretary shall describe prioritized goals, objectives, policies, actions, and schedules to improve the security of public transportation.

**(d) Responsibilities**

The Secretary shall include in the National Strategy for Public Transportation Security a description of the roles, responsibilities, and authorities of Federal, State, and local agencies, tribal governments, and appropriate stakeholders. The plan shall also include—

(1) the identification of, and a plan to address, gaps and unnecessary overlaps in the roles, responsibilities, and authorities of Federal agencies; and

(2) a process for coordinating existing or future security strategies and plans for public transportation, including the National Infrastructure Protection Plan required by Homeland Security Presidential Directive-7; Executive Order No. 13416: Strengthening Surface Transportation Security dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities dated September 28, 2004; and subsequent annexes and agreements.

**(e) Adequacy of existing plans and strategies**

In developing the National Strategy for Public Transportation Security, the Secretary shall use relevant existing risk assessments and strategies developed by the Department or other Federal agencies, including those developed or implemented pursuant to section 114(t)<sup>1</sup> of title 49 or Homeland Security Presidential Directive-7.

**(f) Funding**

There is authorized to be appropriated to the Secretary to carry out this section \$2,000,000 for fiscal year 2008.

(Pub. L. 110-53, title XIV, § 1404, Aug. 3, 2007, 121 Stat. 401.)

REFERENCES IN TEXT

Section 114(t) of title 49, referred to in subsecs. (a) and (e), was redesignated section 114(s) of title 49 by Pub. L. 110-161, div. E, title V, § 568(a), Dec. 26, 2007, 121 Stat. 2092.

Executive Order No. 13416, referred to in subsec. (d)(2), is set out as a note under section 1101 of this title.

**§ 1134. Security assessments and plans**

**(a) Public transportation security assessments**

**(1) Submission**

Not later than 30 days after August 3, 2007, the Administrator of the Federal Transit Administration of the Department of Transportation shall submit all public transportation security assessments and all other relevant information to the Secretary.

**(2) Secretarial review**

Not later than 60 days after receiving the submission under paragraph (1), the Secretary

shall review and augment the security assessments received, and conduct additional security assessments as necessary to ensure that at a minimum, all high risk public transportation agencies, as determined by the Secretary, will have a completed security assessment.

**(3) Content**

The Secretary shall ensure that each completed security assessment includes—

(A) identification of critical assets, infrastructure, and systems and their vulnerabilities; and

(B) identification of any other security weaknesses, including weaknesses in emergency response planning and employee training.

**(b) Bus and rural public transportation systems**

Not later than 180 days after August 3, 2007, the Secretary shall—

(1) conduct security assessments, based on a representative sample, to determine the specific needs of—

(A) local bus-only public transportation systems; and

(B) public transportation systems that receive funds under section 5311 of title 49; and

(2) make the representative assessments available for use by similarly situated systems.

**(c) Security plans**

**(1) Requirement for plan**

**(A) High risk agencies**

The Secretary shall require public transportation agencies determined by the Secretary to be at high risk for terrorism to develop a comprehensive security plan. The Secretary shall provide technical assistance and guidance to public transportation agencies in preparing and implementing security plans under this section.

**(B) Other agencies**

Provided that no public transportation agency that has not been designated high risk shall be required to develop a security plan, the Secretary may also establish a security program for public transportation agencies not designated high risk by the Secretary, to assist those public transportation agencies which request assistance, including—

(i) guidance to assist such agencies in conducting security assessments and preparing and implementing security plans; and

(ii) a process for the Secretary to review and approve such assessments and plans, as appropriate.

**(2) Contents of plan**

The Secretary shall ensure that security plans include, as appropriate—

(A) a prioritized list of all items included in the public transportation agency's security assessment that have not yet been addressed;

(B) a detailed list of any additional capital and operational improvements identified by

the Department or the public transportation agency and a certification of the public transportation agency's technical capacity for operating and maintaining any security equipment that may be identified in such list;

(C) specific procedures to be implemented or used by the public transportation agency in response to a terrorist attack, including evacuation and passenger communication plans and appropriate evacuation and communication measures for the elderly and individuals with disabilities;

(D) a coordinated response plan that establishes procedures for appropriate interaction with State and local law enforcement agencies, emergency responders, and Federal officials in order to coordinate security measures and plans for response in the event of a terrorist attack or other major incident;

(E) a strategy and timeline for conducting training under section 1137 of this title;

(F) plans for providing redundant and other appropriate backup systems necessary to ensure the continued operation of critical elements of the public transportation system in the event of a terrorist attack or other major incident;

(G) plans for providing service capabilities throughout the system in the event of a terrorist attack or other major incident in the city or region which the public transportation system serves;

(H) methods to mitigate damage within a public transportation system in case of an attack on the system, including a plan for communication and coordination with emergency responders; and

(I) other actions or procedures as the Secretary determines are appropriate to address the security of the public transportation system.

### **(3) Review**

Not later than 6 months after receiving the plans required under this section, the Secretary shall—

(A) review each security plan submitted;

(B) require the public transportation agency to make any amendments needed to ensure that the plan meets the requirements of this section; and

(C) approve any security plan that meets the requirements of this section.

### **(4) Exemption**

The Secretary shall not require a public transportation agency to develop a security plan under paragraph (1) if the agency does not receive a grant under section 1135 of this title.

### **(5) Waiver**

The Secretary may waive the exemption provided in paragraph (4) to require a public transportation agency to develop a security plan under paragraph (1) in the absence of grant funds under section 1135 of this title if not less than 3 days after making the determination the Secretary provides the appropriate congressional committees and the public transportation agency written notification detailing the need for the security plan, the

reasons grant funding has not been made available, and the reason the agency has been designated high risk.

### **(d) Consistency with other plans**

The Secretary shall ensure that the security plans developed by public transportation agencies under this section are consistent with the security assessments developed by the Department and the National Strategy for Public Transportation Security developed under section 1133 of this title.

### **(e) Updates**

Not later than September 30, 2008, and annually thereafter, the Secretary shall—

(1) update the security assessments referred to in subsection (a);

(2) update the security improvement priorities required under subsection (f); and

(3) require public transportation agencies to update the security plans required under subsection (c) as appropriate.

### **(f) Security improvement priorities**

#### **(1) In general**

Beginning in fiscal year 2008 and each fiscal year thereafter, the Secretary, after consultation with management and nonprofit employee labor organizations representing public transportation employees as appropriate, and with appropriate State and local officials, shall utilize the information developed or received in this section to establish security improvement priorities unique to each individual public transportation agency that has been assessed.

#### **(2) Allocations**

The Secretary shall use the security improvement priorities established in paragraph (1) as the basis for allocating risk-based grant funds under section 1135 of this title, unless the Secretary notifies the appropriate congressional committees that the Secretary has determined an adjustment is necessary to respond to an urgent threat or other significant national security factors.

### **(g) Shared facilities**

The Secretary shall encourage the development and implementation of coordinated assessments and security plans to the extent a public transportation agency shares facilities (such as tunnels, bridges, stations, or platforms) with another public transportation agency, a freight or passenger railroad carrier, or over-the-road bus operator that are geographically close or otherwise co-located.

### **(h) Nondisclosure of information**

#### **(1) Submission of information to Congress**

Nothing in this section shall be construed as authorizing the withholding of any information from Congress.

#### **(2) Disclosure of independently furnished information**

Nothing in this section shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a public transportation agency under any other Federal law.

**(i) Determination**

In response to a petition by a public transportation agency or at the discretion of the Secretary, the Secretary may recognize existing procedures, protocols, and standards of a public transportation agency that the Secretary determines meet all or part of the requirements of this section regarding security assessments or security plans.

(Pub. L. 110–53, title XIV, § 1405, Aug. 3, 2007, 121 Stat. 402.)

**§ 1135. Public transportation security assistance****(a) Security assistance program****(1) In general**

The Secretary shall establish a program for making grants to eligible public transportation agencies for security improvements described in subsection (b).

**(2) Eligibility**

A public transportation agency is eligible for a grant under this section if the Secretary has performed a security assessment or the agency has developed a security plan under section 1134 of this title. Grant funds shall only be awarded for permissible uses under subsection (b) to—

- (A) address items included in a security assessment; or
- (B) further a security plan.

**(b) Uses of funds**

A recipient of a grant under subsection (a) shall use the grant funds for one or more of the following:

- (1) Capital uses of funds, including—
  - (A) tunnel protection systems;
  - (B) perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades;
  - (C) redundant critical operations control systems;
  - (D) chemical, biological, radiological, or explosive detection systems, including the acquisition of canines used for such detection;
  - (E) surveillance equipment;
  - (F) communications equipment, including mobile service equipment to provide access to wireless Enhanced 911 (E911) emergency services in an underground fixed guideway system;
  - (G) emergency response equipment, including personal protective equipment;
  - (H) fire suppression and decontamination equipment;
  - (I) global positioning or tracking and recovery equipment, and other automated-vehicle-locator-type system equipment;
  - (J) evacuation improvements;
  - (K) purchase and placement of bomb-resistant trash cans throughout public transportation facilities, including subway exits, entrances, and tunnels;
  - (L) capital costs associated with security awareness, security preparedness, and security response training, including training under section 1137 of this title and exercises under section 1136 of this title;

(M) security improvements for public transportation systems, including extensions thereto, in final design or under construction;

(N) security improvements for stations and other public transportation infrastructure, including stations and other public transportation infrastructure owned by State or local governments; and

(O) other capital security improvements determined appropriate by the Secretary.

**(2) Operating uses of funds, including—**

(A) security training, including training under section 1137 of this title and training developed by institutions of higher education and by nonprofit employee labor organizations, for public transportation employees, including frontline employees;

(B) live or simulated exercises under section 1136 of this title;

(C) public awareness campaigns for enhanced public transportation security;

(D) canine patrols for chemical, radiological, biological, or explosives detection;

(E) development of security plans under section 1134 of this title;

(F) overtime reimbursement including reimbursement of State, local, and tribal governments, for costs for enhanced security personnel during significant national and international public events;

(G) operational costs, including reimbursement of State, local, and tribal governments for costs for personnel assigned to full-time or part-time security or counterterrorism duties related to public transportation, provided that this expense totals no more than 10 percent of the total grant funds received by a public transportation agency in any 1 year; and

(H) other operational security costs determined appropriate by the Secretary, excluding routine, ongoing personnel costs, other than those set forth in this section.

**(c) Department of Homeland Security responsibilities**

In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) pursuant to subsection (a)(2), select the recipients of grants based solely on risk; and

(3) pursuant to subsection (b), establish the priorities for which grant funds may be used under this section.

**(d) Distribution of grants**

Not later than 90 days after August 3, 2007, the Secretary and the Secretary of Transportation shall determine the most effective and efficient way to distribute grant funds to the recipients of grants determined by the Secretary under subsection (a). Subject to the determination made by the Secretaries, the Secretary may transfer funds to the Secretary of Transportation for the purposes of disbursing funds to the grant recipient.

**(e) Subject to certain terms and conditions**

Except as otherwise specifically provided in this section, a grant provided under this section

shall be subject to the terms and conditions applicable to a grant made under section 5307 of title 49, as in effect on January 1, 2007, and such other terms and conditions as are determined necessary by the Secretary.

**(f) Limitation on uses of funds**

Grants made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

**(g) Annual reports**

Each recipient of a grant under this section shall report annually to the Secretary on the use of the grant funds.

**(h) Guidelines**

Before distribution of funds to recipients of grants, the Secretary shall issue guidelines to ensure that, to the extent that recipients of grants under this section use contractors or subcontractors, such recipients shall use small, minority, women-owned, or disadvantaged business concerns as contractors or subcontractors to the extent practicable.

**(i) Coordination with State homeland security plans**

In establishing security improvement priorities under section 1134 of this title and in awarding grants for capital security improvements and operational security improvements under subsection (b), the Secretary shall act consistently with relevant State homeland security plans.

**(j) Multistate transportation systems**

In cases in which a public transportation system operates in more than one State, the Secretary shall give appropriate consideration to the risks of the entire system, including those portions of the States into which the system crosses, in establishing security improvement priorities under section 1134 of this title and in awarding grants for capital security improvements and operational security improvements under subsection (b).

**(k) Congressional notification**

Not later than 3 days before the award of any grant under this section, the Secretary shall notify simultaneously, the appropriate congressional committees of the intent to award such grant.

**(l) Return of misspent grant funds**

The Secretary shall establish a process to require the return of any misspent grant funds received under this section determined to have been spent for a purpose other than those specified in the grant award.

**(m) Authorization of appropriations**

(1) There are authorized to be appropriated to the Secretary to make grants under this section—

(A) such sums as are necessary for fiscal year 2007;

(B) \$650,000,000 for fiscal year 2008, except that not more than 50 percent of such funds may be used for operational costs under subsection (b)(2);

(C) \$750,000,000 for fiscal year 2009, except that not more than 30 percent of such funds

may be used for operational costs under subsection (b)(2);

(D) \$900,000,000 for fiscal year 2010, except that not more than 20 percent of such funds may be used for operational costs under subsection (b)(2); and

(E) \$1,100,000,000 for fiscal year 2011, except that not more than 10 percent of such funds may be used for operational costs under subsection (b)(2).

(2) PERIOD OF AVAILABILITY.—Sums appropriated to carry out this section shall remain available until expended.

(3) WAIVER.—The Secretary may waive the limitation on operational costs specified in subparagraphs (B) through (E) of paragraph (1) if the Secretary determines that such a waiver is required in the interest of national security, and if the Secretary provides a written justification to the appropriate congressional committees prior to any such action.

(4) EFFECTIVE DATE.—Funds provided for fiscal year 2007 transit security grants under Public Law 110-28 shall be allocated based on security assessments that are in existence as of August 3, 2007.

(Pub. L. 110-53, title XIV, §1406, Aug. 3, 2007, 121 Stat. 405.)

REFERENCES IN TEXT

Public Law 110-28, referred to in subsec. (m)(4), is Pub. L. 110-28, May 25, 2007, 121 Stat. 112, known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. For complete classification of this Act to the Code, see Tables.

**§ 1136. Security exercises**

**(a) In general**

The Secretary shall establish a program for conducting security exercises for public transportation agencies for the purpose of assessing and improving the capabilities of entities described in subsection (b) to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism.

**(b) Covered entities**

Entities to be assessed under the program shall include—

(1) Federal, State, and local agencies and tribal governments;

(2) public transportation agencies;

(3) governmental and nongovernmental emergency response providers and law enforcement personnel, including transit police; and

(4) any other organization or entity that the Secretary determines appropriate.

**(c) Requirements**

The Secretary shall ensure that the program—

(1) requires, for public transportation agencies which the Secretary deems appropriate, exercises to be conducted that are—

(A) scaled and tailored to the needs of specific public transportation systems, and include taking into account the needs of the elderly and individuals with disabilities;

(B) live;

(C) coordinated with appropriate officials;

(D) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

(E) inclusive, as appropriate, of frontline employees and managers; and

(F) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives;

(2) provides that exercises described in paragraph (1) will be—

(A) evaluated by the Secretary against clear and consistent performance measures;

(B) assessed by the Secretary to learn best practices, which shall be shared with appropriate Federal, State, local, and tribal officials, governmental and nongovernmental emergency response providers, law enforcement personnel, including railroad and transit police, and appropriate stakeholders; and

(C) followed by remedial action by covered entities in response to lessons learned;

(3) involves individuals in neighborhoods around the infrastructure of a public transportation system; and

(4) assists State, local, and tribal governments and public transportation agencies in designing, implementing, and evaluating exercises that conform to the requirements of paragraph (2).

**(d) National Exercise Program**

The Secretary shall ensure that the exercise program developed under subsection (a) is a component of the National Exercise Program established under section 748 of this title.

**(e) Ferry system exemption**

This section does not apply to any ferry system for which drills are required to be conducted pursuant to section 70103 of title 46.

(Pub. L. 110-53, title XIV, §1407, Aug. 3, 2007, 121 Stat. 408.)

**§ 1137. Public transportation security training program**

**(a) In general**

Not later than 90 days after August 3, 2007, the Secretary shall develop and issue detailed interim final regulations, and not later than 1 year after August 3, 2007, the Secretary shall develop and issue detailed final regulations, for a public transportation security training program to prepare public transportation employees, including frontline employees, for potential security threats and conditions.

**(b) Consultation**

The Secretary shall develop the interim final and final regulations under subsection (a) in consultation with—

(1) appropriate law enforcement, fire service, security, and terrorism experts;

(2) representatives of public transportation agencies; and

(3) nonprofit employee labor organizations representing public transportation employees or emergency response personnel.

**(c) Program elements**

The interim final and final regulations developed under subsection (a) shall require security

training programs to include, at a minimum, elements to address the following:

(1) Determination of the seriousness of any occurrence or threat.

(2) Crew and passenger communication and coordination.

(3) Appropriate responses to defend oneself, including using nonlethal defense devices.

(4) Use of personal protective devices and other protective equipment.

(5) Evacuation procedures for passengers and employees, including individuals with disabilities and the elderly.

(6) Training related to behavioral and psychological understanding of, and responses to, terrorist incidents, including the ability to cope with hijacker behavior, and passenger responses.

(7) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.

(8) Recognition and reporting of dangerous substances and suspicious packages, persons, and situations.

(9) Understanding security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers and for on scene interaction with such emergency response providers.

(10) Operation and maintenance of security equipment and systems.

(11) Other security training activities that the Secretary deems appropriate.

**(d) Required programs**

**(1) Development and submission to Secretary**

Not later than 90 days after a public transportation agency meets the requirements under subsection (e), each such public transportation agency shall develop a security training program in accordance with the regulations developed under subsection (a) and submit the program to the Secretary for approval.

**(2) Approval**

Not later than 60 days after receiving a security training program proposal under this subsection, the Secretary shall approve the program or require the public transportation agency that developed the program to make any revisions to the program that the Secretary determines necessary for the program to meet the requirements of the regulations. A public transportation agency shall respond to the Secretary's comments within 30 days after receiving them.

**(3) Training**

Not later than 1 year after the Secretary approves a security training program proposal in accordance with this subsection, the public transportation agency that developed the program shall complete the training of all employees covered under the program.

**(4) Updates of regulations and program revisions**

The Secretary shall periodically review and update, as appropriate, the training regulations issued under subsection (a) to reflect

new or changing security threats. Each public transportation agency shall revise its training program accordingly and provide additional training as necessary to its workers within a reasonable time after the regulations are updated.

**(e) Applicability**

A public transportation agency that receives a grant award under this subchapter shall be required to develop and implement a security training program pursuant to this section.

**(f) Long-term training requirement**

Any public transportation agency required to develop a security training program pursuant to this section shall provide routine and ongoing training for employees covered under the program, regardless of whether the public transportation agency receives subsequent grant awards.

**(g) National Training Program**

The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 748 of this title.

**(h) Ferry exemption**

This section shall not apply to any ferry system for which training is required to be conducted pursuant to section 70103 of title 46.

**(i) Report**

Not later than 2 years after the date of issuance of the final regulation, the Comptroller General shall review implementation of the training program, including interviewing a representative sample of public transportation agencies and employees, and report to the appropriate congressional committees, on the number of reviews conducted and the results. The Comptroller General may submit the report in both classified and redacted formats as necessary.

(Pub. L. 110-53, title XIV, § 1408, Aug. 3, 2007, 121 Stat. 409.)

**§ 1138. Public transportation research and development**

**(a) Establishment of research and development program**

The Secretary shall carry out a research and development program through the Homeland Security Advanced Research Projects Agency in the Science and Technology Directorate and in consultation with the Transportation Security Administration and with the Federal Transit Administration, for the purpose of improving the security of public transportation systems.

**(b) Grants and contracts authorized**

The Secretary shall award grants or contracts to public or private entities to conduct research and demonstrate technologies and methods to reduce and deter terrorist threats or mitigate damages resulting from terrorist attacks against public transportation systems.

**(c) Use of funds**

Grants or contracts awarded under subsection (a)—

- (1) shall be coordinated with activities of the Homeland Security Advanced Research Projects Agency; and

(2) may be used to—

(A) research chemical, biological, radiological, or explosive detection systems that do not significantly impede passenger access;

(B) research imaging technologies;

(C) conduct product evaluations and testing;

(D) improve security and redundancy for critical communications, electrical power, and computer and train control systems;

(E) develop technologies for securing tunnels, transit bridges and aerial structures;

(F) research technologies that mitigate damages in the event of a cyber attack; and

(G) research other technologies or methods for reducing or deterring terrorist attacks against public transportation systems, or mitigating damage from such attacks.

**(d) Privacy and civil rights and civil liberties issues**

**(1) Consultation**

In carrying out research and development projects under this section, the Secretary shall consult with the Chief Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department, as appropriate, and in accordance with section 142 of this title.

**(2) Privacy impact assessments**

In accordance with sections 142 and 345 of this title, the Chief Privacy Officer shall conduct privacy impact assessments and the Officer for Civil Rights and Civil Liberties shall conduct reviews, as appropriate, for research and development initiatives developed under this section.

**(e) Reporting requirement**

Each entity that is awarded a grant or contract under this section shall report annually to the Department on the use of grant or contract funds received under this section to ensure that the awards made are expended in accordance with the purposes of this subchapter and the priorities developed by the Secretary.

**(f) Coordination**

The Secretary shall ensure that the research is consistent with the priorities established in the National Strategy for Public Transportation Security and is coordinated, to the extent practicable, with other Federal, State, local, tribal, and private sector public transportation, railroad, commuter railroad, and over-the-road bus research initiatives to leverage resources and avoid unnecessary duplicative efforts.

**(g) Return of misspent grant or contract funds**

If the Secretary determines that a grantee or contractor used any portion of the grant or contract funds received under this section for a purpose other than the allowable uses specified under subsection (c), the grantee or contractor shall return any amount so used to the Treasury of the United States.

**(h) Authorization of appropriations**

There are authorized to be appropriated to the Secretary to make grants under this section—

- (1) such sums as necessary for fiscal year 2007;

- (2) \$25,000,000 for fiscal year 2008;
- (3) \$25,000,000 for fiscal year 2009;
- (4) \$25,000,000 for fiscal year 2010; and
- (5) \$25,000,000 for fiscal year 2011.

(Pub. L. 110–53, title XIV, § 1409, Aug. 3, 2007, 121 Stat. 411.)

### § 1139. Information sharing

#### (a) Intelligence sharing

The Secretary shall ensure that the Department of Transportation receives appropriate and timely notification of all credible terrorist threats against public transportation assets in the United States.

#### (b) Information Sharing and Analysis Center

##### (1) Authorization

The Secretary shall provide for the reasonable costs of the Information Sharing and Analysis Center for Public Transportation (referred to in this subsection as the “ISAC”).

##### (2) Participation

The Secretary—

(A) shall require public transportation agencies that the Secretary determines to be at high risk of terrorist attack to participate in the ISAC;

(B) shall encourage all other public transportation agencies to participate in the ISAC;

(C) shall encourage the participation of nonprofit employee labor organizations representing public transportation employees, as appropriate; and

(D) shall not charge a fee for participating in the ISAC.

#### (c) Report

The Comptroller General shall report, not less than 3 years after August 3, 2007, to the appropriate congressional committees, as to the value and efficacy of the ISAC along with any other public transportation information-sharing programs ongoing at the Department. The report shall include an analysis of the user satisfaction of public transportation agencies on the state of information-sharing and the value that each system provides the user, the costs and benefits of all centers and programs, the coordination among centers and programs, how each center or program contributes to implementing the information sharing plan under section 1203,<sup>1</sup> and analysis of the extent to which the ISAC is duplicative with the Department’s information-sharing program.

#### (d) Authorization

##### (1) In general

There are authorized to be appropriated to the Secretary to carry out this section—

- (A) \$600,000 for fiscal year 2008;
- (B) \$600,000 for fiscal year 2009;
- (C) \$600,000 for fiscal year 2010; and

(D) such sums as may be necessary for 2011, provided the report required in subsection (c) of this section has been submitted to Congress.

#### (2) Availability of funds

Such sums shall remain available until expended.

(Pub. L. 110–53, title XIV, § 1410, Aug. 3, 2007, 121 Stat. 412.)

#### REFERENCES IN TEXT

Section 1203, referred to in subsec. (c), is section 1203 of title XII of Pub. L. 110–53, Aug. 3, 2007, 121 Stat. 383, which amended section 114 of Title 49, Transportation, and enacted provisions set out as a note under section 114 of Title 49.

### § 1140. Threat assessments

Not later than 1 year after August 3, 2007, the Secretary shall complete a name-based security background check against the consolidated terrorist watchlist and an immigration status check for all public transportation frontline employees, similar to the threat assessment screening program required for facility employees and longshoremen by the Commandant of the Coast Guard under Coast Guard Notice USCG–2006–24189 (71 Fed. Reg. 25066 (April 8, 2006)).

(Pub. L. 110–53, title XIV, § 1411, Aug. 3, 2007, 121 Stat. 413.)

### § 1141. Reporting requirements

#### (a) Annual report to Congress

##### (1) In general

Not later than March 31 of each year, the Secretary shall submit a report, containing the information described in paragraph (2), to the appropriate congressional committees.

##### (2) Contents

The report submitted under paragraph (1) shall include—

(A) a description of the implementation of the provisions of this subchapter;

(B) the amount of funds appropriated to carry out the provisions of this subchapter that have not been expended or obligated;

(C) the National Strategy for Public Transportation Security required under section 1133 of this title;

(D) an estimate of the cost to implement the National Strategy for Public Transportation Security which shall break out the aggregated total cost of needed capital and operational security improvements for fiscal years 2008–2018; and

(E) the state of public transportation security in the United States, which shall include detailing the status of security assessments, the progress being made around the country in developing prioritized lists of security improvements necessary to make public transportation facilities and passengers more secure, the progress being made by agencies in developing security plans and how those plans differ from the security assessments and a prioritized list of security improvements being compiled by other agencies, as well as a random sample of an equal number of large- and small-scale projects currently underway.

##### (3) Format

The Secretary may submit the report in both classified and redacted formats if the

<sup>1</sup> See References in Text note below.



Secretary determines that such action is appropriate or necessary.

**(b) Annual report to Governors**

**(1) In general**

Not later than March 31 of each year, the Secretary shall submit a report to the Governor of each State with a public transportation agency that has received a grant under this Act.

**(2) Contents**

The report submitted under paragraph (1) shall specify—

- (A) the amount of grant funds distributed to each such public transportation agency; and
- (B) the use of such grant funds.

(Pub. L. 110-53, title XIV, §1412, Aug. 3, 2007, 121 Stat. 413.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

**§ 1142. Public transportation employee protections**

**(a) In general**

A public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of Federal grants or other public funds intended to be used for public transportation safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452));<sup>1</sup>

(B) any Member of Congress, any Committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to public transportation safety or security;

(3) to file a complaint or directly cause to be brought a proceeding related to the enforcement of this section or to testify in that proceeding;

(4) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(5) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with public transportation.

**(b) Hazardous safety or security conditions**

(1) A public transportation agency, or a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting a hazardous safety or security condition;

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety- or security-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) of this subsection exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the public transportation agency of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only subsection (b)(1)(A) shall apply to security personnel, including

<sup>1</sup> So in original. The semicolon probably should be preceded by an additional closing parenthesis.

transit police, employed or utilized by a public transportation agency to protect riders, equipment, assets, or facilities.

**(c) Enforcement action**

**(1) Filing and notification**

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) or (b) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of a complaint filed under this paragraph, the Secretary of Labor shall notify, in writing, the person named in the complaint and the person's employer of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

**(2) Investigation; preliminary order**

**(A) In general**

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) or (b) of the Secretary of Labor's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall accompany the Secretary of Labor's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

**(B) Requirements**

**(i) Required showing by complainant**

The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) or (b) was a contributing

factor in the unfavorable personnel action alleged in the complaint.

**(ii) Showing by employer**

Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under paragraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

**(iii) Criteria for determination by Secretary of Labor**

The Secretary of Labor may determine that a violation of subsection (a) or (b) has occurred only if the complainant demonstrates that any behavior described in subsection (a) or (b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

**(iv) Prohibition**

Relief may not be ordered under paragraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

**(3) Final order**

**(A) Deadline for issuance; settlement agreements**

Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

**(B) Remedy**

If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall order the person who committed such violation to—

- (i) take affirmative action to abate the violation; and
- (ii) provide the remedies described in subsection (d).

**(C) Order**

If an order is issued under subparagraph (B), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, bringing the complaint upon which the order was issued.

**(D) Frivolous complaints**

If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer reasonable attorney fees not exceeding \$1,000.

**(4) Review****(A) Appeal to Court of Appeals**

Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

**(B) Limitation on collateral attack**

An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

**(5) Enforcement of order by Secretary of Labor**

Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

**(6) Enforcement of order by parties****(A) Commencement of action**

A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

**(B) Attorney fees**

The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

**(7) De novo review**

With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district

court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The action shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary of Labor.

**(d) Remedies****(1) In general**

An employee prevailing in any action under subsection (c) shall be entitled to all relief necessary to make the employee whole.

**(2) Damages**

Relief in an action under subsection (c) (including an action described in (c)(7))<sup>2</sup> shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

**(3) Possible relief**

Relief in any action under subsection (c) may include punitive damages in an amount not to exceed \$250,000.

**(e) Election of remedies**

An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the public transportation agency.

**(f) No preemption**

Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

**(g) Rights retained by employee**

Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

**(h) Disclosure of identity**

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information described in subsection (a)(1).

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance

<sup>2</sup> So in original. Probably should be "subsection (c)(7)".

notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

**(i) Process for reporting security problems to the Department of Homeland Security**

**(1) Establishment of process**

The Secretary shall establish through regulations after an opportunity for notice and comment, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding public transportation security problems, deficiencies, or vulnerabilities.

**(2) Acknowledgment of receipt**

If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

**(3) Steps to address problem**

The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

(Pub. L. 110-53, title XIV, §1413, Aug. 3, 2007, 121 Stat. 414.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(1)(A), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

**§ 1143. Security background checks of covered individuals for public transportation**

**(a) Definitions**

In this section, the following definitions apply:

**(1) Security background check**

The term “security background check” means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(A) Relevant criminal history databases.

(B) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) Other relevant information or databases, as determined by the Secretary.

**(2) Covered individual**

The term “covered individual” means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency.

**(b) Guidance**

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall con-

tain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.

(2) Not later than 60 days after August 3, 2007, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to August 3, 2007, to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (b)(1).

(3) If a public transportation agency or a contractor or subcontractor of a public transportation agency performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) is provided to covered individuals.

**(c) Requirements**

If the Secretary issues a rule, regulation or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, then the Secretary shall prohibit a public transportation agency or contractor or subcontractor of a public transportation agency from making an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive with respect to a covered individual unless the public transportation agency or contractor or subcontractor of a public transportation agency determines that the covered individual—

(1) has been convicted of, has been found not guilty of by reason of insanity, or is under warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check; or

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the public transportation agency or contractor or subcontractor of a public transportation agency performs the security background check.

**(d) Redress process**

If the Secretary issues a rule, regulation, or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, the Secretary shall—

(1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation workers at ports, as required by section 70105(c) of title 49;<sup>1</sup> and

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a public transportation agency or contractor or subcontractor of a public transportation agency wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

**(e) False statements**

A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after August 3, 2007, the Secretary shall issue a regulation that prohibits a public transportation agency or a contractor or subcontractor of a public transportation agency from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

**(f) Rights and responsibilities**

Nothing in this section shall be construed to abridge a public transportation agency's or a contractor or subcontractor of a public transportation agency's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the section shall be construed to abridge rights and responsibilities of covered individuals, a public transportation agency, or a contractor or subcontractor of a public transportation agency under any other Federal, State, or local laws or collective bargaining agreement.

**(g) No preemption of Federal or State law**

Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks of covered individuals.

**(h) Statutory construction**

Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, including regulations issued pursuant to such section.

(Pub. L. 110-53, title XIV, §1414, Aug. 3, 2007, 121 Stat. 419.)

**§ 1144. Limitation on fines and civil penalties**

**(a) Inspectors**

Surface transportation inspectors shall be prohibited from issuing fines to public transportation agencies for violations of the Department's regulations or orders except through the process described in subsection (b).

**(b) Civil penalties**

The Secretary shall be prohibited from assessing civil penalties against public transportation agencies for violations of the Department's regulations or orders, except in accordance with the following:

(1) In the case of a public transportation agency that is found to be in violation of a regulation or order issued by the Secretary, the Secretary shall seek correction of the violation through a written notice to the public transportation agency and shall give the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to the Secretary.

(2) If the public transportation agency does not correct the violation or propose an alternative means of compliance acceptable to the Secretary within a reasonable time period that is specified in the written notice, the Secretary may take any action authorized in section 114 of title 49.

**(c) Limitation on Secretary**

The Secretary shall not initiate civil enforcement actions for violations of administrative and procedural requirements pertaining to the application for and expenditure of funds awarded under transportation security grant programs under this subchapter.

(Pub. L. 110-53, title XIV, §1415, Aug. 3, 2007, 121 Stat. 422.)

**SUBCHAPTER IV—SURFACE  
TRANSPORTATION SECURITY**

**PART A—GENERAL PROVISIONS**

**§ 1151. Definitions**

In this subchapter, the following definitions apply:

**(1) Appropriate congressional committees**

The term “appropriate congressional committees” means the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives.

**(2) Secretary**

The term “Secretary” means the Secretary of Homeland Security.

**(3) Department**

The term “Department” means the Department of Homeland Security.

<sup>1</sup> So in original. Probably should be title “46.”

**(4) Over-the-road bus**

The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

**(5) Over-the-road bus frontline employees**

In this section,<sup>1</sup> the term “over-the-road bus frontline employees” means over-the-road bus drivers, security personnel, dispatchers, maintenance and maintenance support personnel, ticket agents, other terminal employees, and other employees of an over-the-road bus operator or terminal owner or operator that the Secretary determines should receive security training under this subchapter.

**(6) Railroad frontline employees**

In this section,<sup>1</sup> the term “railroad frontline employees” means security personnel, dispatchers, locomotive engineers, conductors, trainmen, other onboard employees, maintenance and maintenance support personnel, bridge tenders, and any other employees of railroad carriers that the Secretary determines should receive security training under this subchapter.

**(7) Railroad**

The term “railroad” has the meaning that term has in section 20102 of title 49.

**(8) Railroad carrier**

The term “railroad carrier” has the meaning that term has in section 20102 of title 49.

**(9) State**

The term “State” means any one of the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

**(10) Terrorism**

The term “terrorism” has the meaning that term has in section 101 of this title.

**(11) Transportation**

The term “transportation”, as used with respect to an over-the-road bus, means the movement of passengers or property by an over-the-road bus—

(A) in the jurisdiction of the United States between a place in a State and a place outside the State (including a place outside the United States); or

(B) in a State that affects trade, traffic, and transportation described in subparagraph (A).

**(12) United States**

The term “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

**(13) Security-sensitive material**

The term “security-sensitive material” means a material, or a group or class of material, in a particular amount and form that the Secretary, in consultation with the Secretary of Transportation, determines, through a rule-

making with opportunity for public comment, poses a significant risk to national security while being transported in commerce due to the potential use of the material in an act of terrorism. In making such a designation, the Secretary shall, at a minimum, consider the following:

(A) Class 7 radioactive materials.

(B) Division 1.1, 1.2, or 1.3 explosives.

(C) Materials poisonous or toxic by inhalation, including Division 2.3 gases and Division 6.1 materials.

(D) A select agent or toxin regulated by the Centers for Disease Control and Prevention under part 73 of title 42, Code of Federal Regulations.

**(14) Disadvantaged business concerns**

The term “disadvantaged business concerns” means small businesses that are owned and controlled by socially and economically disadvantaged individuals as defined in section 124,<sup>2</sup> of title 13, Code of Federal Regulations.

**(15) Amtrak**

The term “Amtrak” means the National Railroad Passenger Corporation.

(Pub. L. 110-53, title XV, §1501, Aug. 3, 2007, 121 Stat. 422.)

## REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title XV of Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 422, which enacted this subchapter, amended section 1992 of Title 18, Crimes and Criminal Procedure, and sections 114, 5103a, 14504, 20106, 20109, 24301, 28101, and 31105 of Title 49, Transportation, enacted provisions set out as notes under sections 13908 and 14504 of Title 49, and amended provisions set out as a note under section 14504 of Title 49. For complete classification of title XV to the Code, see Tables.

**§ 1152. Oversight and grant procedures****(a) Secretarial oversight**

The Secretary, in coordination with<sup>1</sup> Secretary of Transportation for grants awarded to Amtrak, shall establish necessary procedures, including monitoring and audits, to ensure that grants made under this subchapter are expended in accordance with the purposes of this subchapter and the priorities and other criteria developed by the Secretary.

**(b) Additional audits and reviews**

The Secretary, and the Secretary of Transportation for grants awarded to Amtrak, may award contracts to undertake additional audits and reviews of the safety, security, procurement, management, and financial compliance of a recipient of amounts under this subchapter.

**(c) Procedures for grant award**

Not later than 180 days after August 3, 2007, the Secretary shall prescribe procedures and schedules for the awarding of grants under this subchapter, including application and qualification procedures, and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the

<sup>1</sup> So in original. “In this section,” probably should not appear.

<sup>2</sup> So in original. Probably should be “part 124.”

<sup>1</sup> So in original. The word “the” probably should appear.

grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107(i) and (j) of title 46.

**(d) Additional authority**

**(1) Issuance**

The Secretary may issue non-binding letters of intent to recipients of a grant under this subchapter, to commit funding from future budget authority of an amount, not more than the Federal Government's share of the project's cost, for a capital improvement project.

**(2) Schedule**

The letter of intent under this subsection shall establish a schedule under which the Secretary will reimburse the recipient for the Government's share of the project's costs, as amounts become available, if the recipient, after the Secretary issues that letter, carries out the project without receiving amounts under a grant issued under this subchapter.

**(3) Notice to Secretary**

A recipient that has been issued a letter of intent under this section shall notify the Secretary of the recipient's intent to carry out a project before the project begins.

**(4) Notice to Congress**

The Secretary shall transmit to the appropriate congressional committees a written notification at least 5 days before the issuance of a letter of intent under this subsection.

**(5) Limitations**

A letter of intent issued under this subsection is not an obligation of the Federal Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

**(e) Return of misspent grant funds**

As part of the grant agreement under subsection (c), the Secretary shall require grant applicants to return any misspent grant funds received under this subchapter that the Secretary considers to have been spent for a purpose other than those specified in the grant award. The Secretary shall take all necessary actions to recover such funds.

**(f) Congressional notification**

Not later than 5 days before the award of any grant is made under this subchapter, the Secretary shall notify the appropriate congressional committees of the intent to award such grant.

**(g) Guidelines**

The Secretary shall ensure, to the extent practicable, that grant recipients under this subchapter who use contractors or subcontractors use small, minority, women-owned, or disadvantaged business concerns as contractors or subcontractors when appropriate.

(Pub. L. 110-53, title XV, §1502, Aug. 3, 2007, 121 Stat. 424.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title XV of Pub. L. 110-53, which is classified principally to this subchapter. For complete classification of title XV to the Code, see References in Text note under section 1151 of this title and Tables.

**§ 1153. Authorization of appropriations**

There are authorized to be appropriated to the Secretary of Transportation to carry out section 1165 of this title—

- (1) \$38,000,000 for fiscal year 2008;
- (2) \$40,000,000 for fiscal year 2009;
- (3) \$55,000,000 for fiscal year 2010; and
- (4) \$70,000,000 for fiscal year 2011.

(Pub. L. 110-53, title XV, §1503(b), Aug. 3, 2007, 121 Stat. 425.)

**§ 1154. Public awareness**

Not later than 180 days after August 3, 2007, the Secretary shall develop a national plan for railroad and over-the-road bus security public outreach and awareness. Such a plan shall be designed to increase awareness of measures that the general public, passengers, and employees of railroad carriers and over-the-road bus operators can take to increase the security of the national railroad and over-the-road bus transportation systems. Such a plan shall also provide outreach to railroad carriers and over-the-road bus operators and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve security. Not later than 9 months after August 3, 2007, the Secretary shall implement the plan developed under this section.

(Pub. L. 110-53, title XV, §1504, Aug. 3, 2007, 121 Stat. 425.)

PART B—RAILROAD SECURITY

**§ 1161. Railroad transportation security risk assessment and National Strategy**

**(a) Risk assessment**

The Secretary shall establish a Federal task force, including the Transportation Security Administration and other agencies within the Department, the Department of Transportation, and other appropriate Federal agencies, to complete, within 6 months of August 3, 2007, a nationwide risk assessment of a terrorist attack on railroad carriers. The assessment shall include—

- (1) a methodology for conducting the risk assessment, including timelines, that addresses how the Department will work with the entities described in subsection (c) and make use of existing Federal expertise within the Department, the Department of Transportation, and other appropriate agencies;
- (2) identification and evaluation of critical assets and infrastructure, including tunnels used by railroad carriers in high-threat urban areas;
- (3) identification of risks to those assets and infrastructure;
- (4) identification of risks that are specific to the transportation of hazardous materials via railroad;

(5) identification of risks to passenger and cargo security, transportation infrastructure protection systems, operations, communications systems, and any other area identified by the assessment;

(6) an assessment of employee training and emergency response planning;

(7) an assessment of public and private operational recovery plans, taking into account the plans for the maritime sector required under section 70103 of title 46, to expedite, to the maximum extent practicable, the return of an adversely affected railroad transportation system or facility to its normal performance level after a major terrorist attack or other security event on that system or facility; and

(8) an account of actions taken or planned by both public and private entities to address identified railroad security issues and an assessment of the effective integration of such actions.

### **(b) National Strategy**

#### **(1) Requirement**

Not later than 9 months after August 3, 2007, and based upon the assessment conducted under subsection (a), the Secretary, consistent with and as required by section 114(t)<sup>1</sup> of title 49, shall develop and implement the modal plan for railroad transportation, entitled the “National Strategy for Railroad Transportation Security”.

#### **(2) Contents**

The modal plan shall include prioritized goals, actions, objectives, policies, mechanisms, and schedules for, at a minimum—

(A) improving the security of railroad tunnels, railroad bridges, railroad switching and car storage areas, other railroad infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant railroad-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of railroad service or on operations served or otherwise affected by railroad service;

(B) deploying equipment and personnel to detect security threats, including those posed by explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

(C) consistent with section 1167 of this title, training railroad employees in terrorism prevention, preparedness, passenger evacuation, and response activities;

(D) conducting public outreach campaigns for railroads regarding security, including educational initiatives designed to inform the public on how to prevent, prepare for, respond to, and recover from a terrorist attack on railroad transportation;

(E) providing additional railroad security support for railroads at high or severe threat levels of alert;

(F) ensuring, in coordination with freight and intercity and commuter passenger rail-

roads, the continued movement of freight and passengers in the event of an attack affecting the railroad system, including the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station;

(G) coordinating existing and planned railroad security initiatives undertaken by the public and private sectors;

(H) assessing—

(i) the usefulness of covert testing of railroad security systems;

(ii) the ability to integrate security into infrastructure design; and

(iii) the implementation of random searches of passengers and baggage; and

(I) identifying the immediate and long-term costs of measures that may be required to address those risks and public and private sector sources to fund such measures.

### **(3) Responsibilities**

The Secretary shall include in the modal plan a description of the roles, responsibilities, and authorities of Federal, State, and local agencies, government-sponsored entities, tribal governments, and appropriate stakeholders described in subsection (c). The plan shall also include—

(A) the identification of, and a plan to address, gaps and unnecessary overlaps in the roles, responsibilities, and authorities described in this paragraph;

(B) a methodology for how the Department will work with the entities described in subsection (c), and make use of existing Federal expertise within the Department, the Department of Transportation, and other appropriate agencies;

(C) a process for facilitating security clearances for the purpose of intelligence and information sharing with the entities described in subsection (c), as appropriate;

(D) a strategy and timeline, coordinated with the research and development program established under section 1168 of this title, for the Department, the Department of Transportation, other appropriate Federal agencies and private entities to research and develop new technologies for securing railroad systems; and

(E) a process for coordinating existing or future security strategies and plans for railroad transportation, including the National Infrastructure Protection Plan required by Homeland Security Presidential Directive-7; Executive Order No. 13416: “Strengthening Surface Transportation Security” dated December 5, 2006; the Memorandum of Understanding between the Department and the Department of Transportation on Roles and Responsibilities dated September 28, 2004, and any and all subsequent annexes to this Memorandum of Understanding, and any other relevant agreements between the two Departments.

### **(c) Consultation with stakeholders**

In developing the National Strategy required under this section, the Secretary shall consult with railroad management, nonprofit employee

<sup>1</sup> See References in Text note below.



organizations representing railroad employees, owners or lessors of railroad cars used to transport hazardous materials, emergency responders, offerors of security-sensitive materials, public safety officials, and other relevant parties.

**(d) Adequacy of existing plans and strategies**

In developing the risk assessment and National Strategy required under this section, the Secretary shall utilize relevant existing plans, strategies, and risk assessments developed by the Department or other Federal agencies, including those developed or implemented pursuant to section 114(t)<sup>1</sup> of title 49 or Homeland Security Presidential Directive-7, and, as appropriate, assessments developed by other public and private stakeholders.

**(e) Report**

**(1) Contents**

Not later than 1 year after August 3, 2007, the Secretary shall transmit to the appropriate congressional committees a report containing—

- (A) the assessment and the National Strategy required by this section; and
- (B) an estimate of the cost to implement the National Strategy.

**(2) Format**

The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

**(f) Annual updates**

Consistent with the requirements of section 114(t)<sup>1</sup> of title 49, the Secretary shall update the assessment and National Strategy each year and transmit a report, which may be submitted in both classified and redacted formats, to the appropriate congressional committees containing the updated assessment and recommendations.

**(g) Funding**

Out of funds appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section \$5,000,000 for fiscal year 2008.

(Pub. L. 110-53, title XV, § 1511, Aug. 3, 2007, 121 Stat. 426.)

REFERENCES IN TEXT

Section 114(t) of title 49, referred to in subsecs. (b)(1), (d), and (f), was redesignated section 114(s) of title 49 by Pub. L. 110-161, div. E, title V, § 568(a), Dec. 26, 2007, 121 Stat. 2092.

Executive Order No. 13416, referred to in subsec. (b)(3)(E), is set out as a note under section 1101 of this title.

**§ 1162. Railroad carrier assessments and plans**

**(a) In general**

Not later than 12 months after August 3, 2007, the Secretary shall issue regulations that—

- (1) require each railroad carrier assigned to a high-risk tier under this section to—
  - (A) conduct a vulnerability assessment in accordance with subsections (c) and (d); and
  - (B) to<sup>1</sup> prepare, submit to the Secretary for approval, and implement a security plan

in accordance with this section that addresses security performance requirements; and

- (2) establish standards and guidelines, based on and consistent with the risk assessment and National Strategy for Railroad Transportation Security developed under section 1161 of this title, for developing and implementing the vulnerability assessments and security plans for railroad carriers assigned to high-risk tiers.

**(b) Non high-risk programs**

The Secretary may establish a security program for railroad carriers not assigned to a high-risk tier, including—

- (1) guidance for such carriers in conducting vulnerability assessments and preparing and implementing security plans, as determined appropriate by the Secretary; and
- (2) a process to review and approve such assessments and plans, as appropriate.

**(c) Deadline for submission**

Not later than 9 months after the date of issuance of the regulations under subsection (a), the vulnerability assessments and security plans required by such regulations for railroad carriers assigned to a high-risk tier shall be completed and submitted to the Secretary for review and approval.

**(d) Vulnerability assessments**

**(1) Requirements**

The Secretary shall provide technical assistance and guidance to railroad carriers in conducting vulnerability assessments under this section and shall require that each vulnerability assessment of a railroad carrier assigned to a high-risk tier under this section, include, as applicable—

- (A) identification and evaluation of critical railroad carrier assets and infrastructure, including platforms, stations, intermodal terminals, tunnels, bridges, switching and storage areas, and information systems as appropriate;
- (B) identification of the vulnerabilities to those assets and infrastructure;
- (C) identification of strengths and weaknesses in—

- (i) physical security;
- (ii) passenger and cargo security, including the security of security-sensitive materials being transported by railroad or stored on railroad property;
- (iii) programmable electronic devices, computers, or other automated systems which are used in providing the transportation;
- (iv) alarms, cameras, and other protection systems;
- (v) communications systems and utilities needed for railroad security purposes, including dispatching and notification systems;
- (vi) emergency response planning;
- (vii) employee training; and
- (viii) such other matters as the Secretary determines appropriate; and

- (D) identification of redundant and backup systems required to ensure the continued op-

<sup>1</sup> So in original. The word “to” probably should not appear.

eration of critical elements of a railroad carrier's system in the event of an attack or other incident, including disruption of commercial electric power or communications network.

**(2) Threat information**

The Secretary shall provide in a timely manner to the appropriate employees of a railroad carrier, as designated by the railroad carrier, threat information that is relevant to the carrier when preparing and submitting a vulnerability assessment and security plan, including an assessment of the most likely methods that could be used by terrorists to exploit weaknesses in railroad security.

**(e) Security plans**

**(1) Requirements**

The Secretary shall provide technical assistance and guidance to railroad carriers in preparing and implementing security plans under this section, and shall require that each security plan of a railroad carrier assigned to a high-risk tier under this section include, as applicable—

(A) identification of a security coordinator having authority—

- (i) to implement security actions under the plan;
- (ii) to coordinate security improvements; and
- (iii) to receive immediate communications from appropriate Federal officials regarding railroad security;

(B) a list of needed capital and operational improvements;

(C) procedures to be implemented or used by the railroad carrier in response to a terrorist attack, including evacuation and passenger communication plans that include individuals with disabilities as appropriate;

(D) identification of steps taken with State and local law enforcement agencies, emergency responders, and Federal officials to coordinate security measures and plans for response to a terrorist attack;

(E) a strategy and timeline for conducting training under section 1167 of this title;

(F) enhanced security measures to be taken by the railroad carrier when the Secretary declares a period of heightened security risk;

(G) plans for providing redundant and backup systems required to ensure the continued operation of critical elements of the railroad carrier's system in the event of a terrorist attack or other incident;

(H) a strategy for implementing enhanced security for shipments of security-sensitive materials, including plans for quickly locating and securing such shipments in the event of a terrorist attack or security incident; and

(I) such other actions or procedures as the Secretary determines are appropriate to address the security of railroad carriers.

**(2) Security coordinator requirements**

The Secretary shall require that the individual serving as the security coordinator identi-

fied in paragraph (1)(A) is a citizen of the United States. The Secretary may waive this requirement with respect to an individual if the Secretary determines that it is appropriate to do so based on a background check of the individual and a review of the consolidated terrorist watchlist.

**(3) Consistency with other plans**

The Secretary shall ensure that the security plans developed by railroad carriers under this section are consistent with the risk assessment and National Strategy for Railroad Transportation Security developed under section 1161 of this title.

**(f) Deadline for review process**

Not later than 6 months after receiving the assessments and plans required under this section, the Secretary shall—

(1) review each vulnerability assessment and security plan submitted to the Secretary in accordance with subsection (c);

(2) require amendments to any security plan that does not meet the requirements of this section; and

(3) approve any vulnerability assessment or security plan that meets the requirements of this section.

**(g) Interim security measures**

The Secretary may require railroad carriers, during the period before the deadline established under subsection (c), to submit a security plan under subsection (e) to implement any necessary interim security measures essential to providing adequate security of the railroad carrier's system. An interim plan required under this subsection will be superseded by a plan required under subsection (e).

**(h) Tier assignment**

Utilizing the risk assessment and National Strategy for Railroad Transportation Security required under section 1161 of this title, the Secretary shall assign each railroad carrier to a risk-based tier established by the Secretary:

**(1) Provision of information**

The Secretary may request, and a railroad carrier shall provide, information necessary for the Secretary to assign a railroad carrier to the appropriate tier under this subsection.

**(2) Notification**

Not later than 60 days after the date a railroad carrier is assigned to a tier under this subsection, the Secretary shall notify the railroad carrier of the tier to which it is assigned and the reasons for such assignment.

**(3) High-risk tiers**

At least one of the tiers established by the Secretary under this subsection shall be designated a tier for high-risk railroad carriers.

**(4) Reassignment**

The Secretary may reassign a railroad carrier to another tier, as appropriate, in response to changes in risk. The Secretary shall notify the railroad carrier not later than 60 days after such reassignment and provide the railroad carrier with the reasons for such reassignment.

**(i) Nondisclosure of information****(1) Submission of information to Congress**

Nothing in this section shall be construed as authorizing the withholding of any information from Congress.

**(2) Disclosure of independently furnished information**

Nothing in this section shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a railroad carrier under any other Federal law.

**(j) Existing procedures, protocols and standards****(1) Determination**

In response to a petition by a railroad carrier or at the discretion of the Secretary, the Secretary may determine that existing procedures, protocols, and standards meet all or part of the requirements of this section, including regulations issued under subsection (a), regarding vulnerability assessments and security plans.

**(2) Election**

Upon review and written determination by the Secretary that existing procedures, protocols, or standards of a railroad carrier satisfy the requirements of this section, the railroad carrier may elect to comply with those procedures, protocols, or standards instead of the requirements of this section.

**(3) Partial approval**

If the Secretary determines that the existing procedures, protocols, or standards of a railroad carrier satisfy only part of the requirements of this section, the Secretary may accept such submission, but shall require submission by the railroad carrier of any additional information relevant to the vulnerability assessment and security plan of the railroad carrier to ensure that the remaining requirements of this section are fulfilled.

**(4) Notification**

If the Secretary determines that particular existing procedures, protocols, or standards of a railroad carrier under this subsection do not satisfy the requirements of this section, the Secretary shall provide to the railroad carrier a written notification that includes an explanation of the determination.

**(5) Review**

Nothing in this subsection shall relieve the Secretary of the obligation—

(A) to review the vulnerability assessment and security plan submitted by a railroad carrier under this section; and

(B) to approve or disapprove each submission on an individual basis.

**(k) Periodic evaluation by railroad carriers required****(1) Submission of evaluation**

Not later than 3 years after the date on which a vulnerability assessment or security plan required to be submitted to the Secretary under subsection (c) is approved, and at least once every 5 years thereafter (or on such a

schedule as the Secretary may establish by regulation), a railroad carrier who submitted a vulnerability assessment and security plan and who is still assigned to the high-risk tier must also submit to the Secretary an evaluation of the adequacy of the vulnerability assessment and security plan that includes a description of any material changes made to the vulnerability assessment or security plan.

**(2) Review of evaluation**

Not later than 180 days after the date on which an evaluation is submitted, the Secretary shall review the evaluation and notify the railroad carrier submitting the evaluation of the Secretary's approval or disapproval of the evaluation.

**(l) Shared facilities**

The Secretary may permit under this section the development and implementation of coordinated vulnerability assessments and security plans to the extent that a railroad carrier shares facilities with, or is colocated with, other transportation entities or providers that are required to develop vulnerability assessments and security plans under Federal law.

**(m) Consultation**

In carrying out this section, the Secretary shall consult with railroad carriers, nonprofit employee labor organizations representation railroad employees, and public safety and law enforcement officials.

(Pub. L. 110-53, title XV, §1512, Aug. 3, 2007, 121 Stat. 429.)

**§ 1163. Railroad security assistance****(a) Security improvement grants**

(1) The Secretary, in consultation with the Administrator of the Transportation Security Administration and other appropriate agencies or officials, is authorized to make grants to railroad carriers, the Alaska Railroad, security-sensitive materials offerors who ship by railroad, owners of railroad cars used in the transportation of security-sensitive materials, State and local governments (for railroad passenger facilities and infrastructure not owned by Amtrak), and Amtrak for intercity passenger railroad and freight railroad security improvements described in subsection (b) as approved by the Secretary.

(2) A railroad carrier is eligible for a grant under this section if the carrier has completed a vulnerability assessment and developed a security plan that the Secretary has approved in accordance with section 1162 of this title.

(3) A recipient of a grant under this section may use grant funds only for permissible uses under subsection (b) to further a railroad security plan that meets the requirements of paragraph (2).

(4) Notwithstanding the requirement for eligibility and uses of funds in paragraphs (2) and (3), a railroad carrier is eligible for a grant under this section if the applicant uses the funds solely for the development of assessments or security plans under section 1162 of this title.

(5) Notwithstanding the requirements for eligibility and uses of funds in paragraphs (2) and

(3), prior to the earlier of 1 year after the date of issuance of final regulations requiring vulnerability assessments and security plans under section 1162 of this title or 3 years after August 3, 2007, the Secretary may award grants under this section for rail security improvements listed under subsection (b) based upon railroad carrier vulnerability assessments and security plans that the Secretary determines are sufficient for the purposes of this section but have not been approved by the Secretary in accordance with section 1162 of this title.

**(b) Uses of funds**

A recipient of a grant under this section shall use the grant funds for one or more of the following:

(1) Security and redundancy for critical communications, computer, and train control systems essential for secure railroad operations.

(2) Accommodation of railroad cargo or passenger security inspection facilities, related infrastructure, and operations at or near United States international borders or other ports of entry.

(3) The security of security-sensitive materials transportation by railroad.

(4) Chemical, biological, radiological, or explosive detection, including canine patrols for such detection.

(5) The security of intercity passenger railroad stations, trains, and infrastructure, including security capital improvement projects that the Secretary determines enhance railroad station security.

(6) Technologies to reduce the vulnerabilities of railroad cars, including structural modification of railroad cars transporting security-sensitive materials to improve their resistance to acts of terrorism.

(7) The sharing of intelligence and information about security threats.

(8) To obtain train tracking and communications equipment, including equipment that is interoperable with Federal, State, and local agencies and tribal governments.

(9) To hire, train, and employ police and security officers, including canine units, assigned to full-time security or counterterrorism duties related to railroad transportation.

(10) Overtime reimbursement, including reimbursement of State, local, and tribal governments for costs, for enhanced security personnel assigned to duties related to railroad security during periods of high or severe threat levels and National Special Security Events or other periods of heightened security as determined by the Secretary.

(11) Perimeter protection systems, including access control, installation of improved lighting, fencing, and barricades at railroad facilities.

(12) Tunnel protection systems.

(13) Passenger evacuation and evacuation-related capital improvements.

(14) Railroad security inspection technologies, including verified visual inspection technologies using hand-held readers.

(15) Surveillance equipment.

(16) Cargo or passenger screening equipment.

(17) Emergency response equipment, including fire suppression and decontamination equipment, personal protective equipment, and defibrillators.

(18) Operating and capital costs associated with security awareness, preparedness, and response training, including training under section 1167 of this title, and training developed by universities, institutions of higher education, and nonprofit employee labor organizations, for railroad employees, including front-line employees.

(19) Live or simulated exercises, including exercises described in section 1166 of this title.

(20) Public awareness campaigns for enhanced railroad security.

(21) Development of assessments or security plans under section 1162 of this title.

(22) Other security improvements—

(A) identified, required, or recommended under sections 1161 and 1162 of this title, including infrastructure, facilities, and equipment upgrades; or

(B) that the Secretary considers appropriate.

**(c) Department of Homeland Security responsibilities**

In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants;

(2) establish priorities for uses of funds for grant recipients;

(3) award the funds authorized by this section based on risk, as identified by the plans required under sections 1161 and 1162 of this title, or assessment or plan described in subsection (a)(5);

(4) take into account whether stations or facilities are used by commuter railroad passengers as well as intercity railroad passengers in reviewing grant applications;

(5) encourage non-Federal financial participation in projects funded by grants; and

(6) not later than 5 business days after awarding a grant to Amtrak under this section, transfer grant funds to the Secretary of Transportation to be disbursed to Amtrak.

**(d) Multiyear awards**

Grant funds awarded under this section may be awarded for projects that span multiple years.

**(e) Limitation on uses of funds**

A grant made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

**(f) Annual reports**

Each recipient of a grant under this section shall report annually to the Secretary on the use of grant funds.

**(g) Non-Federal match study**

Not later than 240 days after August 3, 2007, the Secretary shall provide a report to the appropriate congressional committees on the feasibility and appropriateness of requiring a non-Federal match for grants awarded to freight

railroad carriers and other private entities under this section.

**(h) Subject to certain standards**

A recipient of a grant under this section and sections 1164 and 1165 of this title shall be required to comply with the standards of section 24312 of title 49, as in effect on January 1, 2007, with respect to the project in the same manner as Amtrak is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title.

**(i) Authorization of appropriations**

**(1) In general**

Out of funds appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

- (A) \$300,000,000 for fiscal year 2008;
- (B) \$300,000,000 for fiscal year 2009;
- (C) \$300,000,000 for fiscal year 2010; and
- (D) \$300,000,000 for fiscal year 2011.

**(2) Period of availability**

Sums appropriated to carry out this section shall remain available until expended.

(Pub. L. 110-53, title XV, §1513, Aug. 3, 2007, 121 Stat. 433.)

**§ 1164. Systemwide Amtrak security upgrades**

**(a) In general**

**(1) Grants**

Subject to subsection (b), the Secretary, in consultation with the Administrator of the Transportation Security Administration, is authorized to make grants to Amtrak in accordance with the provisions of this section.

**(2) General purposes**

The Secretary may make such grants for the purposes of—

- (A) protecting underwater and underground assets and systems;
- (B) protecting high-risk and high-consequence assets identified through system-wide risk assessments;
- (C) providing counterterrorism or security training;
- (D) providing both visible and unpredictable deterrence; and
- (E) conducting emergency preparedness drills and exercises.

**(3) Specific projects**

The Secretary shall make such grants—

- (A) to secure major tunnel access points and ensure tunnel integrity in New York, New Jersey, Maryland, and Washington, DC;
- (B) to secure Amtrak trains;
- (C) to secure Amtrak stations;
- (D) to obtain a watchlist identification system approved by the Secretary;
- (E) to obtain train tracking and interoperable communications systems that are coordinated with Federal, State, and local agencies and tribal governments to the maximum extent possible;
- (F) to hire, train, and employ police and security officers, including canine units, as-

signed to full-time security or counterterrorism duties related to railroad transportation;

(G) for operating and capital costs associated with security awareness, preparedness, and response training, including training under section 1167 of this title, and training developed by universities, institutions of higher education, and nonprofit employee labor organizations, for railroad employees, including frontline employees; and

(H) for live or simulated exercises, including exercises described in section 1166 of this title.

**(b) Conditions**

The Secretary shall award grants to Amtrak under this section for projects contained in a systemwide security plan approved by the Secretary developed pursuant to section 1162 of this title. Not later than 5 business days after awarding a grant to Amtrak under this section, the Secretary shall transfer the grant funds to the Secretary of Transportation to be disbursed to Amtrak.

**(c) Equitable geographic allocation**

The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system and consistent with the risk assessment required under section 1161 of this title and Amtrak's vulnerability assessment and security plan developed under section 1162 of this title, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

**(d) Availability of funds**

**(1) In general**

Out of funds appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary and the Administrator of the Transportation Security Administration to carry out this section—

- (A) \$150,000,000 for fiscal year 2008;
- (B) \$150,000,000 for fiscal year 2009;
- (C) \$175,000,000 for fiscal year 2010; and
- (D) \$175,000,000 for fiscal year 2011.

**(2) Availability of appropriated funds**

Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(Pub. L. 110-53, title XV, §1514, Aug. 3, 2007, 121 Stat. 435.)

**§ 1165. Fire and life safety improvements**

**(a) Life-safety needs**

There are authorized to be appropriated to the Secretary of Transportation for making grants to Amtrak for the purpose of carrying out projects to make fire and life safety improvements to Amtrak tunnels on the Northeast Corridor the following amounts:

- (1) For the 6 New York and New Jersey tunnels to provide ventilation, electrical, and fire safety technology improvements, emergency communication and lighting systems, and emergency access and egress for passengers—

- (A) \$25,000,000 for fiscal year 2008;

- (B) \$30,000,000 for fiscal year 2009;
- (C) \$45,000,000 for fiscal year 2010; and
- (D) \$60,000,000 for fiscal year 2011.

(2) For the Baltimore Potomac Tunnel and the Union Tunnel, together, to provide adequate drainage and ventilation, communication, lighting, standpipe, and passenger egress improvements—

- (A) \$5,000,000 for fiscal year 2008;
- (B) \$5,000,000 for fiscal year 2009;
- (C) \$5,000,000 for fiscal year 2010; and
- (D) \$5,000,000 for fiscal year 2011.

(3) For the Union Station tunnels in the District of Columbia to improve ventilation, communication, lighting, and passenger egress improvements—

- (A) \$5,000,000 for fiscal year 2008;
- (B) \$5,000,000 for fiscal year 2009;
- (C) \$5,000,000 for fiscal year 2010; and
- (D) \$5,000,000 for fiscal year 2011.

**(b) Infrastructure upgrades**

Out of funds appropriated pursuant to section 1153 of this title, there shall be made available to the Secretary of Transportation for fiscal year 2008, \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

**(c) Availability of amounts**

Amounts appropriated pursuant to this section shall remain available until expended.

**(d) Plans required**

The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

- (1) until Amtrak has submitted to the Secretary of Transportation, and the Secretary of Transportation has approved, an engineering and financial plan for such projects; and
- (2) unless, for each project funded pursuant to this section, the Secretary of Transportation has approved a project management plan prepared by Amtrak.

**(e) Review of plans**

**(1) In general**

The Secretary of Transportation shall complete the review of a plan required under subsection (d) and approve or disapprove the plan within 45 days after the date on which each such plan is submitted by Amtrak.

**(2) Incomplete or deficient plan**

If the Secretary of Transportation determines that a plan is incomplete or deficient, the Secretary of Transportation shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary of Transportation's notification, submit a modified plan for the Secretary of Transportation's review.

**(3) Approval of plan**

Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary of Transportation shall either approve the modified plan, or if the Secretary of

Transportation finds the plan is still incomplete or deficient, the Secretary of Transportation shall—

- (A) identify in writing to the appropriate congressional committees the portions of the plan the Secretary finds incomplete or deficient;
- (B) approve all other portions of the plan;
- (C) obligate the funds associated with those portions; and
- (D) execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

**(f) Financial contribution from other tunnel users**

The Secretary of Transportation, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a), shall—

- (1) consider the extent to which railroad carriers other than Amtrak use or plan to use the tunnels;
- (2) consider the feasibility of seeking a financial contribution from those other railroad carriers toward the costs of the projects; and
- (3) obtain financial contributions or commitments from such other railroad carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.

(Pub. L. 110-53, title XV, §1515, Aug. 3, 2007, 121 Stat. 437.)

**§ 1166. Railroad carrier exercises**

**(a) In general**

The Secretary shall establish a program for conducting security exercises for railroad carriers for the purpose of assessing and improving the capabilities of entities described in subsection (b) to prevent, prepare for, mitigate, respond to, and recover from acts of terrorism.

**(b) Covered entities**

Entities to be assessed under the program shall include—

- (1) Federal, State, and local agencies and tribal governments;
- (2) railroad carriers;
- (3) governmental and nongovernmental emergency response providers, law enforcement agencies, and railroad and transit police, as appropriate; and
- (4) any other organization or entity that the Secretary determines appropriate.

**(c) Requirements**

The Secretary shall ensure that the program—

- (1) consolidates existing security exercises for railroad carriers administered by the Department and the Department of Transportation, as jointly determined by the Secretary and the Secretary of Transportation, unless the Secretary waives this consolidation requirement as appropriate;
- (2) consists of exercises that are—
  - (A) scaled and tailored to the needs of the carrier, including addressing the needs of the elderly and individuals with disabilities;
  - (B) live, in the case of the most at-risk facilities to a terrorist attack;
  - (C) coordinated with appropriate officials;

(D) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

(E) inclusive, as appropriate, of railroad frontline employees; and

(F) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives;

(3) provides that exercises described in paragraph (2) will be—

(A) evaluated by the Secretary against clear and consistent performance measures;

(B) assessed by the Secretary to identify best practices, which shall be shared, as appropriate, with railroad carriers, nonprofit employee organizations that represent railroad carrier employees, Federal, State, local, and tribal officials, governmental and nongovernmental emergency response providers, law enforcement personnel, including railroad carrier and transit police, and other stakeholders; and

(C) used to develop recommendations, as appropriate, from the Secretary to railroad carriers on remedial action to be taken in response to lessons learned;

(4) allows for proper advanced notification of communities and local governments in which exercises are held, as appropriate; and

(5) assists State, local, and tribal governments and railroad carriers in designing, implementing, and evaluating additional exercises that conform to the requirements of paragraph (1).

**(d) National Exercise Program**

The Secretary shall ensure that the exercise program developed under subsection (c) is a component of the National Exercise Program established under section 748 of this title.

(Pub. L. 110-53, title XV, § 1516, Aug. 3, 2007, 121 Stat. 438.)

**§ 1167. Railroad security training program**

**(a) In general**

Not later than 6 months after August 3, 2007, the Secretary shall develop and issue regulations for a training program to prepare railroad frontline employees for potential security threats and conditions. The regulations shall take into consideration any current security training requirements or best practices.

**(b) Consultation**

The Secretary shall develop the regulations under subsection (a) in consultation with—

(1) appropriate law enforcement, fire service, emergency response, security, and terrorism experts;

(2) railroad carriers;

(3) railroad shippers; and

(4) nonprofit employee labor organizations representing railroad employees or emergency response personnel.

**(c) Program elements**

The regulations developed under subsection (a) shall require security training programs de-

scribed in subsection (a) to include, at a minimum, elements to address the following, as applicable:

(1) Determination of the seriousness of any occurrence or threat.

(2) Crew and passenger communication and coordination.

(3) Appropriate responses to defend or protect oneself.

(4) Use of personal and other protective equipment.

(5) Evacuation procedures for passengers and railroad employees, including individuals with disabilities and the elderly.

(6) Psychology, behavior, and methods of terrorists, including observation and analysis.

(7) Training related to psychological responses to terrorist incidents, including the ability to cope with hijacker behavior and passenger responses.

(8) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.

(9) Recognition and reporting of dangerous substances, suspicious packages, and situations.

(10) Understanding security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers and for on-scene interaction with such emergency response providers.

(11) Operation and maintenance of security equipment and systems.

(12) Other security training activities that the Secretary considers appropriate.

**(d) Required programs**

**(1) Development and submission to Secretary**

Not later than 90 days after the Secretary issues regulations under subsection (a), each railroad carrier shall develop a security training program in accordance with this section and submit the program to the Secretary for approval.

**(2) Approval or disapproval**

Not later than 60 days after receiving a security training program proposal under this subsection, the Secretary shall approve the program or require the railroad carrier that developed the program to make any revisions to the program that the Secretary considers necessary for the program to meet the requirements of this section. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them.

**(3) Training**

Not later than 1 year after the Secretary approves a security training program in accordance with this subsection, the railroad carrier that developed the program shall complete the training of all railroad frontline employees who were hired by a carrier more than 30 days preceding such date. For such employees employed less than 30 days by a carrier preceding such date, training shall be completed within the first 60 days of employment.

**(4) Updates of regulations and program revisions**

The Secretary shall periodically review and update as appropriate the training regulations

issued under subsection (a) to reflect new or changing security threats. Each railroad carrier shall revise its training program accordingly and provide additional training as necessary to its frontline employees within a reasonable time after the regulations are updated.

**(e) National Training Program**

The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 748 of this title.

**(f) Reporting requirements**

Not later than 2 years after the date of regulation issuance, the Secretary shall review implementation of the training program of a representative sample of railroad carriers and railroad frontline employees, and report to the appropriate congressional committees on the number of reviews conducted and the results of such reviews. The Secretary may submit the report in both classified and redacted formats as necessary.

**(g) Other employees**

The Secretary shall issue guidance and best practices for a railroad shipper employee security program containing the elements listed under subsection (c).

(Pub. L. 110-53, title XV, § 1517, Aug. 3, 2007, 121 Stat. 439.)

**§ 1168. Railroad security research and development**

**(a) Establishment of research and development program**

The Secretary, acting through the Under Secretary for Science and Technology and the Administrator of the Transportation Security Administration, shall carry out a research and development program for the purpose of improving the security of railroad transportation systems.

**(b) Eligible projects**

The research and development program may include projects—

(1) to reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances, including the development of technology to screen passengers in large numbers at peak commuting times with minimal interference and disruption;

(2) to test new emergency response and recovery techniques and technologies, including those used at international borders;

(3) to develop improved railroad security technologies, including—

(A) technologies for sealing or modifying railroad tank cars;

(B) automatic inspection of railroad cars;

(C) communication-based train control systems;

(D) emergency response training, including training in a tunnel environment;

(E) security and redundancy for critical communications, electrical power, computer, and train control systems; and

(F) technologies for securing bridges and tunnels;

(4) to test wayside detectors that can detect tampering;

(5) to support enhanced security for the transportation of security-sensitive materials by railroad;

(6) to mitigate damages in the event of a cyber attack; and

(7) to address other vulnerabilities and risks identified by the Secretary.

**(c) Coordination with other research initiatives**

The Secretary—

(1) shall ensure that the research and development program is consistent with the National Strategy for Railroad Transportation Security developed under section 1161 of this title and any other transportation security research and development programs required by this Act;

(2) shall, to the extent practicable, coordinate the research and development activities of the Department with other ongoing research and development security-related initiatives, including research being conducted by—

(A) the Department of Transportation, including University Transportation Centers and other institutes, centers, and simulators funded by the Department of Transportation;

(B) the National Academy of Sciences;

(C) the Technical Support Working Group;

(D) other Federal departments and agencies; and

(E) other Federal and private research laboratories, research entities, and universities and institutions of higher education, including Historically Black Colleges and Universities, Hispanic Serving Institutions, or Indian Tribally Controlled Colleges and Universities;

(3) shall carry out any research and development project authorized by this section through a reimbursable agreement with an appropriate Federal agency, if the agency—

(A) is currently sponsoring a research and development project in a similar area; or

(B) has a unique facility or capability that would be useful in carrying out the project;

(4) may award grants, or enter into cooperative agreements, contracts, other transactions, or reimbursable agreements to the entities described in paragraph (2) and the eligible grant recipients under section 1163 of this title; and

(5) shall make reasonable efforts to enter into memoranda of understanding, contracts, grants, cooperative agreements, or other transactions with railroad carriers willing to contribute both physical space and other resources.

**(d) Privacy and civil rights and civil liberties issues**

**(1) Consultation**

In carrying out research and development projects under this section, the Secretary shall consult with the Chief Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department



as appropriate and in accordance with section 142 of this title.

**(2) Privacy impact assessments**

In accordance with sections 142 and 345 of this title, the Chief Privacy Officer shall conduct privacy impact assessments and the Officer for Civil Rights and Civil Liberties shall conduct reviews, as appropriate, for research and development initiatives developed under this section that the Secretary determines could have an impact on privacy, civil rights, or civil liberties.

**(e) Authorization of appropriations**

**(1) In general**

Out of funds appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

- (A) \$33,000,000 for fiscal year 2008;
- (B) \$33,000,000 for fiscal year 2009;
- (C) \$33,000,000 for fiscal year 2010; and
- (D) \$33,000,000 for fiscal year 2011.

**(2) Period of availability**

Such sums shall remain available until expended.

(Pub. L. 110-53, title XV, §1518, Aug. 3, 2007, 121 Stat. 441.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

**§ 1169. Railroad tank car security testing**

**(a) Railroad tank car vulnerability assessment**

**(1) Assessment**

The Secretary shall assess the likely methods of a deliberate terrorist attack against a railroad tank car used to transport toxic-inhalation-hazard materials, and for each method assessed, the degree to which it may be successful in causing death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, or public welfare.

**(2) Threats**

In carrying out paragraph (1), the Secretary shall consider the most current threat information as to likely methods of a successful terrorist attack on a railroad tank car transporting toxic-inhalation-hazard materials, and may consider the following:

- (A) Explosive devices placed along the tracks or attached to a railroad tank car.
- (B) The use of missiles, grenades, rockets, mortars, or other high-caliber weapons against a railroad tank car.

**(3) Physical testing**

In developing the assessment required under paragraph (1), the Secretary shall conduct physical testing of the vulnerability of railroad tank cars used to transport toxic-inhalation-hazard materials to different methods of a deliberate attack, using technical information and criteria to evaluate the structural integrity of railroad tank cars.

tion-hazard materials to different methods of a deliberate attack, using technical information and criteria to evaluate the structural integrity of railroad tank cars.

**(4) Report**

Not later than 30 days after the completion of the assessment under paragraph (1), the Secretary shall provide to the appropriate congressional committees a report, in the appropriate format, on such assessment.

**(b) Railroad tank car dispersion modeling**

**(1) In general**

The Secretary, acting through the National Infrastructure Simulation and Analysis Center, shall conduct an air dispersion modeling analysis of release scenarios of toxic-inhalation-hazard materials resulting from a terrorist attack on a loaded railroad tank car carrying such materials in urban and rural environments.

**(2) Considerations**

The analysis under this subsection shall take into account the following considerations:

- (A) The most likely means of attack and the resulting dispersal rate.
- (B) Different times of day, to account for differences in cloud coverage and other atmospheric conditions in the environment being modeled.
- (C) Differences in population size and density.
- (D) Historically accurate wind speeds, temperatures, and wind directions.
- (E) Differences in dispersal rates or other relevant factors related to whether a railroad tank car is in motion or stationary.
- (F) Emergency response procedures by local officials.
- (G) Any other considerations the Secretary believes would develop an accurate, plausible dispersion model for toxic-inhalation-hazard materials released from a railroad tank car as a result of a terrorist act.

**(3) Consultation**

In conducting the dispersion modeling under paragraph (1), the Secretary shall consult with the Secretary of Transportation, hazardous materials experts, railroad carriers, nonprofit employee labor organizations representing railroad employees, appropriate State, local, and tribal officials, and other Federal agencies, as appropriate.

**(4) Information sharing**

Upon completion of the analysis required under paragraph (1), the Secretary shall share the information developed with the appropriate stakeholders, given appropriate information protection provisions as may be required by the Secretary.

**(5) Report**

Not later than 30 days after completion of all dispersion analyses under paragraph (1), the Secretary shall submit to the appropriate congressional committees a report detailing the Secretary's conclusions and findings in an appropriate format.

(Pub. L. 110-53, title XV, § 1519, Aug. 3, 2007, 121 Stat. 443.)

### **§ 1170. Security background checks of covered individuals**

#### **(a) Definitions**

In this section, the following definitions apply:

##### **(1) Security background check**

The term “security background check” means reviewing, for the purpose of identifying individuals who may pose a threat to transportation security or national security, or of terrorism—

(A) relevant criminal history databases;

(B) in the case of an alien (as defined in the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)),<sup>1</sup> the relevant databases to determine the status of the alien under the immigration laws of the United States; and

(C) other relevant information or databases, as determined by the Secretary.

##### **(2) Covered individual**

The term “covered individual” means an employee of a railroad carrier or a contractor or subcontractor of a railroad carrier.

#### **(b) Guidance**

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action items issued by the Secretary to a railroad carrier or a contractor or subcontractor of a railroad carrier relating to performing a security background check of a covered individual shall contain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.

(2) Within 60 days after August 3, 2007, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to August 3, 2007, to a railroad carrier or a contractor or subcontractor of a railroad carrier relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (1).

(3) If a railroad carrier or a contractor or subcontractor of a railroad carrier performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) is provided to covered individuals.

#### **(c) Requirements**

If the Secretary issues a rule, regulation, or directive requiring a railroad carrier or contractor or subcontractor of a railroad carrier to perform a security background check of a covered individual, then the Secretary shall prohibit the railroad carrier or contractor or subcontractor of a railroad carrier from making an adverse

employment decision, including removal or suspension of the covered individual, due to such rule, regulation, or directive with respect to a covered individual unless the railroad carrier or contractor or subcontractor of a railroad carrier determines that the covered individual—

(1) has been convicted of, has been found not guilty by reason of insanity, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the railroad carrier or contractor or subcontractor of a railroad carrier performs the security background check; or

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the railroad carrier or contractor or subcontractor of a railroad carrier performs the security background check.

#### **(d) Redress process**

If the Secretary issues a rule, regulation, or directive requiring a railroad carrier or contractor or subcontractor of a railroad carrier to perform a security background check of a covered individual, the Secretary shall—

(1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation employees at ports, as required by section 70105(c) of title 46; and

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a railroad carrier or contractor or subcontractor of a railroad carrier wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

#### **(e) False statements**

A railroad carrier or a contractor or subcontractor of a railroad carrier may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after August 3, 2007, the Secretary shall issue a regulation that prohibits a railroad carrier or a contractor or subcontractor of a railroad carrier from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

<sup>1</sup> So in original. Another closing parenthesis probably should precede the comma.

**(f) Rights and responsibilities**

Nothing in this section shall be construed to abridge a railroad carrier's or a contractor or subcontractor of a railroad carrier's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the section shall be construed to abridge rights and responsibilities of covered individuals, a railroad carrier, or a contractor or subcontractor of a railroad carrier, under any other Federal, State, or local laws or under any collective bargaining agreement.

**(g) No preemption of Federal or State law**

Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks, of covered individuals.

**(h) Statutory construction**

Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, including regulations issued pursuant to such section.

(Pub. L. 110-53, title XV, §1522, Aug. 3, 2007, 121 Stat. 448.)

## REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(1)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. The term "alien" is defined in section 101(a)(3) of the Act which is classified to section 1101(a)(3) of Title 8. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

**§ 1171. International railroad security program****(a) In general**

(1) The Secretary shall develop a system to detect both undeclared passengers and contraband, with a primary focus on the detection of nuclear and radiological materials entering the United States by railroad.

(2) **SYSTEM REQUIREMENTS.**—In developing the system under paragraph (1), the Secretary may, in consultation with the Domestic Nuclear Detection Office, Customs and Border Protection, and the Transportation Security Administration—

(A) deploy radiation detection equipment and nonintrusive imaging equipment at locations where railroad shipments cross an international border to enter the United States;

(B) consider the integration of radiation detection technologies with other nonintrusive inspection technologies where feasible;

(C) ensure appropriate training, operations, and response protocols are established for Federal, State, and local personnel;

(D) implement alternative procedures to check railroad shipments at locations where the deployment of nonintrusive inspection imaging equipment is determined to not be practicable;

(E) ensure, to the extent practicable, that such technologies deployed can detect ter-

rorists or weapons, including weapons of mass destruction; and

(F) take other actions, as appropriate, to develop the system.

**(b) Additional information**

The Secretary shall—

(1) identify and seek the submission of additional data elements for improved high-risk targeting related to the movement of cargo through the international supply chain utilizing a railroad prior to importation into the United States;

(2) utilize data collected and maintained by the Secretary of Transportation in the targeting of high-risk cargo identified under paragraph (1); and

(3) analyze the data provided in this subsection to identify high-risk cargo for inspection.

**(c) Report to Congress**

Not later than September 30, 2008, the Secretary shall transmit to the appropriate congressional committees a report that describes the progress of the system being developed under subsection (a).

**(d) Definitions**

In this section:

**(1) International supply chain**

The term "international supply chain" means the end-to-end process for shipping goods to or from the United States, beginning at the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination.

**(2) Radiation detection equipment**

The term "radiation detection equipment" means any technology that is capable of detecting or identifying nuclear and radiological material or nuclear and radiological explosive devices.

**(3) Inspection**

The term "inspection" means the comprehensive process used by Customs and Border Protection to assess goods entering the United States to appraise them for duty purposes, to detect the presence of restricted or prohibited items, and to ensure compliance with all applicable laws.

(Pub. L. 110-53, title XV, §1524, Aug. 3, 2007, 121 Stat. 451.)

**§ 1172. Railroad security enhancements; Model State legislation**

Not later than November 2, 2007, the Secretary of Transportation shall develop and make available to States model legislation to address the problem of entities that claim to be railroad carriers in order to establish and run a police force when the entities do not in fact provide railroad transportation. In developing the model State legislation the Secretary shall solicit the input of the States, railroad carriers, and railroad carrier employees. The Secretary shall review and, if necessary, revise such model State legislation periodically.

(Pub. L. 110-53, title XV, §1526(b), Aug. 3, 2007, 121 Stat. 452.)

PART C—OVER-THE-ROAD BUS AND TRUCKING  
SECURITY

**§ 1181. Over-the-road bus security assessments and plans**

**(a) In general**

Not later than 18 months after August 3, 2007, the Secretary shall issue regulations that—

(1) require each over-the-road bus operator assigned to a high-risk tier under this section—

(A) to conduct a vulnerability assessment in accordance with subsections (c) and (d); and

(B) to prepare, submit to the Secretary for approval, and implement a security plan in accordance with subsection (e); and

(2) establish standards and guidelines for developing and implementing the vulnerability assessments and security plans for carriers assigned to high-risk tiers consistent with this section.

**(b) Non high-risk programs**

The Secretary may establish a security program for over-the-road bus operators not assigned to a high-risk tier, including—

(1) guidance for such operators in conducting vulnerability assessments and preparing and implementing security plans, as determined appropriate by the Secretary; and

(2) a process to review and approve such assessments and plans, as appropriate.

**(c) Deadline for submission**

Not later than 9 months after the date of issuance of the regulations under subsection (a), the vulnerability assessments and security plans required by such regulations for over-the-road bus operators assigned to a high-risk tier shall be completed and submitted to the Secretary for review and approval.

**(d) Vulnerability assessments**

**(1) Requirements**

The Secretary shall provide technical assistance and guidance to over-the-road bus operators in conducting vulnerability assessments under this section and shall require that each vulnerability assessment of an operator assigned to a high-risk tier under this section includes, as appropriate—

(A) identification and evaluation of critical assets and infrastructure, including platforms, stations, terminals, and information systems;

(B) identification of the vulnerabilities to those assets and infrastructure; and

(C) identification of weaknesses in—

(i) physical security;

(ii) passenger and cargo security;

(iii) the security of programmable electronic devices, computers, or other automated systems which are used in providing over-the-road bus transportation;

(iv) alarms, cameras, and other protection systems;

(v) communications systems and utilities needed for over-the-road bus security purposes, including dispatching systems;

(vi) emergency response planning;

(vii) employee training; and

(viii) such other matters as the Secretary determines appropriate.

**(2) Threat information**

The Secretary shall provide in a timely manner to the appropriate employees of an over-the-road bus operator, as designated by the over-the-road bus operator, threat information that is relevant to the operator when preparing and submitting a vulnerability assessment and security plan, including an assessment of the most likely methods that could be used by terrorists to exploit weaknesses in over-the-road bus security.

**(e) Security plans**

**(1) Requirements**

The Secretary shall provide technical assistance and guidance to over-the-road bus operators in preparing and implementing security plans under this section and shall require that each security plan of an over-the-road bus operator assigned to a high-risk tier under this section includes, as appropriate—

(A) the identification of a security coordinator having authority—

(i) to implement security actions under the plan;

(ii) to coordinate security improvements; and

(iii) to receive communications from appropriate Federal officials regarding over-the-road bus security;

(B) a list of needed capital and operational improvements;

(C) procedures to be implemented or used by the over-the-road bus operator in response to a terrorist attack, including evacuation and passenger communication plans that include individuals with disabilities, as appropriate;

(D) the identification of steps taken with State and local law enforcement agencies, emergency responders, and Federal officials to coordinate security measures and plans for response to a terrorist attack;

(E) a strategy and timeline for conducting training under section 1184 of this title;

(F) enhanced security measures to be taken by the over-the-road bus operator when the Secretary declares a period of heightened security risk;

(G) plans for providing redundant and backup systems required to ensure the continued operation of critical elements of the over-the-road bus operator's system in the event of a terrorist attack or other incident; and

(H) such other actions or procedures as the Secretary determines are appropriate to address the security of over-the-road bus operators.

**(2) Security coordinator requirements**

The Secretary shall require that the individual serving as the security coordinator identified in paragraph (1)(A) is a citizen of the United States. The Secretary may waive this requirement with respect to an individual if the Secretary determines that it is appro-

priate to do so based on a background check of the individual and a review of the consolidated terrorist watchlist.

**(f) Deadline for review process**

Not later than 6 months after receiving the assessments and plans required under this section, the Secretary shall—

- (1) review each vulnerability assessment and security plan submitted to the Secretary in accordance with subsection (c);
- (2) require amendments to any security plan that does not meet the requirements of this section; and
- (3) approve any vulnerability assessment or security plan that meets the requirements of this section.

**(g) Interim security measures**

The Secretary may require over-the-road bus operators, during the period before the deadline established under subsection (c), to submit a security plan to implement any necessary interim security measures essential to providing adequate security of the over-the-road bus operator's system. An interim plan required under this subsection shall be superseded by a plan required under subsection (c).

**(h) Tier assignment**

The Secretary shall assign each over-the-road bus operator to a risk-based tier established by the Secretary:

**(1) Provision of information**

The Secretary may request, and an over-the-road bus operator shall provide, information necessary for the Secretary to assign an over-the-road bus operator to the appropriate tier under this subsection.

**(2) Notification**

Not later than 60 days after the date an over-the-road bus operator is assigned to a tier under this section, the Secretary shall notify the operator of the tier to which it is assigned and the reasons for such assignment.

**(3) High-risk tiers**

At least one of the tiers established by the Secretary under this section shall be a tier designated for high-risk over-the-road bus operators.

**(4) Reassignment**

The Secretary may reassign an over-the-road bus operator to another tier, as appropriate, in response to changes in risk and the Secretary shall notify the over-the-road bus operator within 60 days after such reassignment and provide the operator with the reasons for such reassignment.

**(i) Existing procedures, protocols, and standards**

**(1) Determination**

In response to a petition by an over-the-road bus operator or at the discretion of the Secretary, the Secretary may determine that existing procedures, protocols, and standards meet all or part of the requirements of this section regarding vulnerability assessments and security plans.

**(2) Election**

Upon review and written determination by the Secretary that existing procedures, proto-

cols, or standards of an over-the-road bus operator satisfy the requirements of this section, the over-the-road bus operator may elect to comply with those procedures, protocols, or standards instead of the requirements of this section.

**(3) Partial approval**

If the Secretary determines that the existing procedures, protocols, or standards of an over-the-road bus operator satisfy only part of the requirements of this section, the Secretary may accept such submission, but shall require submission by the operator of any additional information relevant to the vulnerability assessment and security plan of the operator to ensure that the remaining requirements of this section are fulfilled.

**(4) Notification**

If the Secretary determines that particular existing procedures, protocols, or standards of an over-the-road bus operator under this subsection do not satisfy the requirements of this section, the Secretary shall provide to the operator a written notification that includes an explanation of the reasons for nonacceptance.

**(5) Review**

Nothing in this subsection shall relieve the Secretary of the obligation—

- (A) to review the vulnerability assessment and security plan submitted by an over-the-road bus operator under this section; and
- (B) to approve or disapprove each submission on an individual basis.

**(j) Periodic evaluation by over-the-road bus provider required**

**(1) Submission of evaluation**

Not later than 3 years after the date on which a vulnerability assessment or security plan required to be submitted to the Secretary under subsection (c) is approved, and at least once every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), an over-the-road bus operator who submitted a vulnerability assessment and security plan and who is still assigned to the high-risk tier shall also submit to the Secretary an evaluation of the adequacy of the vulnerability assessment and security plan that includes a description of any material changes made to the vulnerability assessment or security plan.

**(2) Review of evaluation**

Not later than 180 days after the date on which an evaluation is submitted, the Secretary shall review the evaluation and notify the over-the-road bus operator submitting the evaluation of the Secretary's approval or disapproval of the evaluation.

**(k) Shared facilities**

The Secretary may permit under this section the development and implementation of coordinated vulnerability assessments and security plans to the extent that an over-the-road bus operator shares facilities with, or is colocated with, other transportation entities or providers that are required to develop vulnerability assessments and security plans under Federal law.

**(I) Nondisclosure of information****(1) Submission of information to Congress**

Nothing in this section shall be construed as authorizing the withholding of any information from Congress.

**(2) Disclosure of independently furnished information**

Nothing in this section shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from an over-the-road bus operator under any other Federal law.

(Pub. L. 110-53, title XV, §1531, Aug. 3, 2007, 121 Stat. 454.)

**§ 1182. Over-the-road bus security assistance****(a) In general**

The Secretary shall establish a program for making grants to eligible private operators providing transportation by an over-the-road bus for security improvements described in subsection (b).

**(b) Uses of funds**

A recipient of a grant received under subsection (a) shall use the grant funds for one or more of the following:

(1) Constructing and modifying terminals, garages, and facilities, including terminals and other over-the-road bus facilities owned by State or local governments, to increase their security.

(2) Modifying over-the-road buses to increase their security.

(3) Protecting or isolating the driver of an over-the-road bus.

(4) Acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or other means and for information links with government agencies, for security purposes.

(5) Installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities.

(6) Establishing and improving an emergency communications system linking drivers and over-the-road buses to the recipient's operations center or linking the operations center to law enforcement and emergency personnel.

(7) Implementing and operating passenger screening programs for weapons and explosives.

(8) Public awareness campaigns for enhanced over-the-road bus security.

(9) Operating and capital costs associated with over-the-road bus security awareness, preparedness, and response training, including training under section 1184 of this title and training developed by institutions of higher education and by nonprofit employee labor organizations, for over-the-road bus employees, including frontline employees.

(10) Chemical, biological, or explosive detection, including canine patrols for such detection.

(11) Overtime reimbursement, including reimbursement of State, local, and tribal governments for costs, for enhanced security personnel assigned to duties related to over-the-road bus security during periods of high or severe threat levels, National Special Security Events, or other periods of heightened security as determined by the Secretary.

(12) Live or simulated exercises, including those described in section 1183 of this title.

(13) Operational costs to hire, train, and employ police and security officers, including canine units, assigned to full-time security or counterterrorism duties related to over-the-road bus transportation, including reimbursement of State, local, and tribal government costs for such personnel.

(14) Development of assessments or security plans under section 1181 of this title.

(15) Such other improvements as the Secretary considers appropriate.

**(c) Due consideration**

In making grants under this section, the Secretary shall prioritize grant funding based on security risks to bus passengers and the ability of a project to reduce, or enhance response to, that risk, and shall not penalize private operators of over-the-road buses that have taken measures to enhance over-the-road bus transportation security prior to September 11, 2001.

**(d) Department of Homeland Security responsibilities**

In carrying out the responsibilities under subsection (a), the Secretary shall—

(1) determine the requirements for recipients of grants under this section, including application requirements;

(2) select grant recipients;

(3) award the funds authorized by this section based on risk, as identified by the plans required under section 1181 of this title or assessment or plan described in subsection (f)(2); and

(4) pursuant to subsection (c), establish priorities for the use of funds for grant recipients.

**(e) Distribution of grants**

Not later than 90 days after August 3, 2007, the Secretary and the Secretary of Transportation shall determine the most effective and efficient way to distribute grant funds to the recipients of grants determined by the Secretary under subsection (a). Subject to the determination made by the Secretaries, the Secretary may transfer funds to the Secretary of Transportation for the purposes of disbursing funds to the grant recipient.

**(f) Eligibility**

(1) A private operator providing transportation by an over-the-road bus is eligible for a grant under this section if the operator has completed a vulnerability assessment and developed a security plan that the Secretary has approved under section 1181 of this title. Grant funds may only be used for permissible uses under subsection (b) to further an over-the-road bus security plan.

(2) Notwithstanding the requirements for eligibility and uses in paragraph (1), prior to the

earlier of 1 year after the date of issuance of final regulations requiring vulnerability assessments and security plans under section 1181 of this title or 3 years after August 3, 2007, the Secretary may award grants under this section for over-the-road bus security improvements listed under subsection (b) based upon over-the-road bus vulnerability assessments and security plans that the Secretary deems are sufficient for the purposes of this section but have not been approved by the Secretary in accordance with section 1181 of this title.

**(g) Subject to certain terms and conditions**

Except as otherwise specifically provided in this section, a grant made under this section shall be subject to the terms and conditions applicable to subrecipients who provide over-the-road bus transportation under section 5311(f) of title 49 and such other terms and conditions as are determined necessary by the Secretary.

**(h) Limitation on uses of funds**

A grant made under this section may not be used to make any State or local government cost-sharing contribution under any other Federal law.

**(i) Annual reports**

Each recipient of a grant under this section shall report annually to the Secretary and on the use of such grant funds.

**(j) Consultation**

In carrying out this section, the Secretary shall consult with over-the-road bus operators and nonprofit employee labor organizations representing over-the-road bus employees, public safety and law enforcement officials.

**(k) Authorization**

**(1) In general**

From the amounts appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to make grants under this section—

- (A) \$12,000,000 for fiscal year 2008;
- (B) \$25,000,000 for fiscal year 2009;
- (C) \$25,000,000 for fiscal year 2010; and
- (D) \$25,000,000 for fiscal year 2011.

**(2) Period of availability**

Sums appropriated to carry out this section shall remain available until expended.

(Pub. L. 110-53, title XV, §1532, Aug. 3, 2007, 121 Stat. 457.)

**§ 1183. Over-the-road bus exercises**

**(a) In general**

The Secretary shall establish a program for conducting security exercises for over-the-road bus transportation for the purpose of assessing and improving the capabilities of entities described in subsection (b) to prevent, prepare for, mitigate, respond to, and recover from acts of terrorism.

**(b) Covered entities**

Entities to be assessed under the program shall include—

- (1) Federal, State, and local agencies and tribal governments;

- (2) over-the-road bus operators and over-the-road bus terminal owners and operators;

- (3) governmental and nongovernmental emergency response providers and law enforcement agencies; and

- (4) any other organization or entity that the Secretary determines appropriate.

**(c) Requirements**

The Secretary shall ensure that the program—

- (1) consolidates existing security exercises for over-the-road bus operators and terminals administered by the Department and the Department of Transportation, as jointly determined by the Secretary and the Secretary of Transportation, unless the Secretary waives this consolidation requirement, as appropriate;

- (2) consists of exercises that are—

- (A) scaled and tailored to the needs of the over-the-road bus operators and terminals, including addressing the needs of the elderly and individuals with disabilities;

- (B) live, in the case of the most at-risk facilities to a terrorist attack;

- (C) coordinated with appropriate officials;
- (D) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

- (E) inclusive, as appropriate, of over-the-road bus frontline employees; and

- (F) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other such national initiatives;

- (3) provides that exercises described in paragraph (2) will be—

- (A) evaluated by the Secretary against clear and consistent performance measures;

- (B) assessed by the Secretary to identify best practices, which shall be shared, as appropriate, with operators providing over-the-road bus transportation, nonprofit employee organizations that represent over-the-road bus employees, Federal, State, local, and tribal officials, governmental and nongovernmental emergency response providers, and law enforcement personnel; and

- (C) used to develop recommendations, as appropriate, provided to over-the-road bus operators and terminal owners and operators on remedial action to be taken in response to lessons learned;

- (4) allows for proper advanced notification of communities and local governments in which exercises are held, as appropriate; and

- (5) assists State, local, and tribal governments and over-the-road bus operators and terminal owners and operators in designing, implementing, and evaluating additional exercises that conform to the requirements of paragraph (2).

**(d) National Exercise Program**

The Secretary shall ensure that the exercise program developed under subsection (c) is consistent with the National Exercise Program established under section 748 of this title.

(Pub. L. 110-53, title XV, §1533, Aug. 3, 2007, 121 Stat. 460.)

#### **§ 1184. Over-the-road bus security training program**

##### **(a) In general**

Not later than 6 months after August 3, 2007, the Secretary shall develop and issue regulations for an over-the-road bus training program to prepare over-the-road bus frontline employees for potential security threats and conditions. The regulations shall take into consideration any current security training requirements or best practices.

##### **(b) Consultation**

The Secretary shall develop regulations under subsection (a) in consultation with—

- (1) appropriate law enforcement, fire service, emergency response, security, and terrorism experts;
- (2) operators providing over-the-road bus transportation; and
- (3) nonprofit employee labor organizations representing over-the-road bus employees and emergency response personnel.

##### **(c) Program elements**

The regulations developed under subsection (a) shall require security training programs, to include, at a minimum, elements to address the following, as applicable:

- (1) Determination of the seriousness of any occurrence or threat.
- (2) Driver and passenger communication and coordination.
- (3) Appropriate responses to defend or protect oneself.
- (4) Use of personal and other protective equipment.
- (5) Evacuation procedures for passengers and over-the-road bus employees, including individuals with disabilities and the elderly.
- (6) Psychology, behavior, and methods of terrorists, including observation and analysis.
- (7) Training related to psychological responses to terrorist incidents, including the ability to cope with hijacker behavior and passenger responses.
- (8) Live situational training exercises regarding various threat conditions, including tunnel evacuation procedures.
- (9) Recognition and reporting of dangerous substances, suspicious packages, and situations.
- (10) Understanding security incident procedures, including procedures for communicating with emergency response providers and for on-scene interaction with such emergency response providers.
- (11) Operation and maintenance of security equipment and systems.
- (12) Other security training activities that the Secretary considers appropriate.

##### **(d) Required programs**

###### **(1) Development and submission to Secretary**

Not later than 90 days after the Secretary issues the regulations under subsection (a), each over-the-road bus operator shall develop a security training program in accordance with such regulations and submit the program to the Secretary for approval.

###### **(2) Approval**

Not later than 60 days after receiving a security training program under this subsection,

the Secretary shall approve the program or require the over-the-road bus operator that developed the program to make any revisions to the program that the Secretary considers necessary for the program to meet the requirements of the regulations. An over-the-road bus operator shall respond to the Secretary's comments not later than 30 days after receiving them.

##### **(3) Training**

Not later than 1 year after the Secretary approves a security training program in accordance with this subsection, the over-the-road bus operator that developed the program shall complete the training of all over-the-road bus frontline employees who were hired by the operator more than 30 days preceding such date. For such employees employed less than 30 days by an operator preceding such date, training shall be completed within the first 60 days of employment.

##### **(4) Updates of regulations and program revisions**

The Secretary shall periodically review and update, as appropriate, the training regulations issued under subsection (a) to reflect new or changing security threats. Each over-the-road bus operator shall revise its training program accordingly and provide additional training as necessary to its employees within a reasonable time after the regulations are updated.

##### **(e) National Training Program**

The Secretary shall ensure that the training program developed under subsection (a) is a component of the National Training Program established under section 748 of this title.

##### **(f) Reporting requirements**

Not later than 2 years after the date of regulation issuance, the Secretary shall review implementation of the training program of a representative sample of over-the-road bus operators and over-the-road bus frontline employees, and report to the appropriate congressional committees of such reviews. The Secretary may submit the report in both classified and redacted formats as necessary.

(Pub. L. 110-53, title XV, § 1534, Aug. 3, 2007, 121 Stat. 461.)

#### **§ 1185. Over-the-road bus security research and development**

##### **(a) Establishment of research and development program**

The Secretary, acting through the Under Secretary for Science and Technology and the Administrator of the Transportation Security Administration, shall carry out a research and development program for the purpose of improving the security of over-the-road buses.

##### **(b) Eligible projects**

The research and development program may include projects—

- (1) to reduce the vulnerability of over-the-road buses, stations, terminals, and equipment to explosives and hazardous chemical, biological, and radioactive substances, including the



development of technology to screen passengers in large numbers with minimal interference and disruption;

(2) to test new emergency response and recovery techniques and technologies, including those used at international borders;

(3) to develop improved technologies, including those for—

(A) emergency response training, including training in a tunnel environment, if appropriate; and

(B) security and redundancy for critical communications, electrical power, computer, and over-the-road bus control systems; and

(4) to address other vulnerabilities and risks identified by the Secretary.

**(c) Coordination with other research initiatives**

The Secretary—

(1) shall ensure that the research and development program is consistent with the other transportation security research and development programs required by this Act;

(2) shall, to the extent practicable, coordinate the research and development activities of the Department with other ongoing research and development security-related initiatives, including research being conducted by—

(A) the Department of Transportation, including University Transportation Centers and other institutes, centers, and simulators funded by the Department of Transportation;

(B) the National Academy of Sciences;

(C) the Technical Support Working Group;

(D) other Federal departments and agencies; and

(E) other Federal and private research laboratories, research entities, and institutions of higher education, including Historically Black Colleges and Universities, Hispanic Serving Institutions, and Indian Tribally Controlled Colleges and Universities;

(3) shall carry out any research and development project authorized by this section through a reimbursable agreement with an appropriate Federal agency, if the agency—

(A) is currently sponsoring a research and development project in a similar area; or

(B) has a unique facility or capability that would be useful in carrying out the project;

(4) may award grants and enter into cooperative agreements, contracts, other transactions, or reimbursable agreements to the entities described in paragraph (2) and eligible recipients under section 1182 of this title; and

(5) shall make reasonable efforts to enter into memoranda of understanding, contracts, grants, cooperative agreements, or other transactions with private operators providing over-the-road bus transportation willing to contribute assets, physical space, and other resources.

**(d) Privacy and civil rights and civil liberties issues**

**(1) Consultation**

In carrying out research and development projects under this section, the Secretary

shall consult with the Chief Privacy Officer of the Department and the Officer for Civil Rights and Civil Liberties of the Department as appropriate and in accordance with section 142 of this title.

**(2) Privacy impact assessments**

In accordance with sections 142 and 345 of this title, the Chief Privacy Officer shall conduct privacy impact assessments and the Officer for Civil Rights and Civil Liberties shall conduct reviews, as appropriate, for research and development initiatives developed under this section that the Secretary determines could have an impact on privacy, civil rights, or civil liberties.

**(e) Authorization of appropriations**

**(1) In general**

From the amounts appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

(A) \$2,000,000 for fiscal year 2008;

(B) \$2,000,000 for fiscal year 2009;

(C) \$2,000,000 for fiscal year 2010; and

(D) \$2,000,000 for fiscal year 2011.

**(2) Period of availability**

Such sums shall remain available until expended.

(Pub. L. 110-53, title XV, §1535, Aug. 3, 2007, 121 Stat. 462.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 266, known as the Implementing Recommendations of the 9/11 Commission Act of 2007, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of this title and Tables.

**§ 1186. Memorandum of Understanding annex**

Not later than 1 year after August 3, 2007, the Secretary of Transportation and the Secretary shall execute and develop an annex to the Memorandum of Understanding between the two departments signed on September 28, 2004, governing the specific roles, delineations of responsibilities, resources, and commitments of the Department of Transportation and the Department of Homeland Security, respectively, in addressing motor carrier transportation security matters, including over-the-road bus security matters, and shall cover the processes the Departments will follow to promote communications, efficiency, and nonduplication of effort.

(Pub. L. 110-53, title XV, §1541, Aug. 3, 2007, 121 Stat. 469.)

PART D—HAZARDOUS MATERIAL AND PIPELINE SECURITY

**§ 1201. Railroad routing of security-sensitive materials**

**(a) In general**

Not later than 9 months after August 3, 2007, the Secretary of Transportation, in consultation with the Secretary, shall publish a final rule

based on the Pipeline and Hazardous Materials Safety Administration's Notice of Proposed Rulemaking published on December 21, 2006, entitled "Hazardous Materials: Enhancing Railroad Transportation Safety and Security for Hazardous Materials Shipments". The final rule shall incorporate the requirements of this section and, as appropriate, public comments received during the comment period of the rule-making.

**(b) Security-sensitive materials commodity data**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to, no later than 90 days after the end of each calendar year, compile security-sensitive materials commodity data. Such data must be collected by route, line segment, or series of line segments, as aggregated by the railroad carrier. Within the railroad carrier selected route, the commodity data must identify the geographic location of the route and the total number of shipments by the United Nations identification number for the security-sensitive materials.

**(c) Railroad transportation route analysis for security-sensitive materials**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to, for each calendar year, provide a written analysis of the safety and security risks for the transportation routes identified in the security-sensitive materials commodity data collected as required by subsection (b). The safety and security risks present shall be analyzed for the route, railroad facilities, railroad storage facilities, and high-consequence targets along or in proximity to the route.

**(d) Alternative route analysis for security-sensitive materials**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to—

- (1) for each calendar year—
  - (A) identify practicable alternative routes over which the railroad carrier has authority to operate as compared to the current route for such a shipment analyzed under subsection (c); and
  - (B) perform a safety and security risk assessment of the alternative route for comparison to the route analysis specified in subsection (c);
- (2) ensure that the analysis under paragraph (1) includes—
  - (A) identification of safety and security risks for an alternative route;
  - (B) comparison of those risks identified under subparagraph (A) to the primary railroad transportation route, including the risk of a catastrophic release from a shipment traveling along the alternate route compared to the primary route;
  - (C) any remediation or mitigation measures implemented on the primary or alternative route; and
  - (D) potential economic effects of using an alternative route; and

(3) consider when determining the practicable alternative routes under paragraph (1)(A) the use of interchange agreements with other railroad carriers.

**(e) Alternative route selection for security-sensitive materials**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to use the analysis required by subsections (c) and (d) to select the safest and most secure route to be used in transporting security-sensitive materials.

**(f) Review**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to annually review and select the practicable route posing the least overall safety and security risk in accordance with this section. The railroad carrier must retain in writing all route review and selection decision documentation and restrict the distribution, disclosure, and availability of information contained in the route analysis to appropriate persons. This documentation should include, but is not limited to, comparative analyses, charts, graphics, or railroad system maps.

**(g) Retrospective analysis**

The Secretary of Transportation shall ensure that the final rule requires each railroad carrier transporting security-sensitive materials in commerce to, not less than once every 3 years, analyze the route selection determinations required under this section. Such an analysis shall include a comprehensive, systemwide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along or in proximity to the route, or other changes affecting the safety and security of the movements of security-sensitive materials that were implemented since the previous analysis was completed.

**(h) Consultation**

In carrying out subsection (c), railroad carriers transporting security-sensitive materials in commerce shall seek relevant information from State, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route used by a railroad carrier to transport security-sensitive materials.

**(i) Definitions**

In this section:

(1) The term "route" includes storage facilities and trackage used by railroad cars in transportation in commerce.

(2) The term "high-consequence target" means a property, natural resource, location, area, or other target designated by the Secretary that is a viable terrorist target of national significance, which may include a facility or specific critical infrastructure, the attack of which by railroad could result in—

- (A) catastrophic loss of life;
- (B) significant damage to national security or defense capabilities; or

(C) national economic harm.

(Pub. L. 110–53, title XV, §1551, Aug. 3, 2007, 121 Stat. 469.)

## **§ 1202. Railroad security-sensitive material tracking**

### **(a) Communications**

#### **(1) In general**

In conjunction with the research and development program established under section 1168 of this title and consistent with the results of research relating to wireless and other tracking technologies, the Secretary, in consultation with the Administrator of the Transportation Security Administration, shall develop a program that will encourage the equipping of railroad cars transporting security-sensitive materials, as defined in section 1151 of this title, with technology that provides—

(A) car position location and tracking capabilities; and

(B) notification of railroad car depressurization, breach, unsafe temperature, or release of hazardous materials, as appropriate.

#### **(2) Coordination**

In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for railroad car tracking at the Department of Transportation; and

(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security's hazardous material railroad tank car tracking pilot programs.

### **(b) Funding**

From the amounts appropriated pursuant to 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

- (1) \$3,000,000 for fiscal year 2008;
- (2) \$3,000,000 for fiscal year 2009; and
- (3) \$3,000,000 for fiscal year 2010.

(Pub. L. 110–53, title XV, §1552, Aug. 3, 2007, 121 Stat. 471.)

## **§ 1203. Hazardous materials highway routing**

### **(a) Route plan guidance**

Not later than 1 year after August 3, 2007, the Secretary of Transportation, in consultation with the Secretary, shall—

(1) document existing and proposed routes for the transportation of radioactive and non-radioactive hazardous materials by motor carrier, and develop a framework for using a geographic information system-based approach to characterize routes in the national hazardous materials route registry;

(2) assess and characterize existing and proposed routes for the transportation of radioactive and nonradioactive hazardous materials by motor carrier for the purpose of identifying measurable criteria for selecting routes based on safety and security concerns;

(3) analyze current route-related hazardous materials regulations in the United States,

Canada, and Mexico to identify cross-border differences and conflicting regulations;

(4) document the safety and security concerns of the public, motor carriers, and State, local, territorial, and tribal governments about the highway routing of hazardous materials;

(5) prepare guidance materials for State officials to assist them in identifying and reducing both safety concerns and security risks when designating highway routes for hazardous materials consistent with the 13 safety-based nonradioactive materials routing criteria and radioactive materials routing criteria in subpart C part 397 of title 49, Code of Federal Regulations;

(6) develop a tool that will enable State officials to examine potential routes for the highway transportation of hazardous materials, assess specific security risks associated with each route, and explore alternative mitigation measures; and

(7) transmit to the appropriate congressional committees a report on the actions taken to fulfill paragraphs (1) through (6) and any recommended changes to the routing requirements for the highway transportation of hazardous materials in part 397 of title 49, Code of Federal Regulations.

### **(b) Route plans**

#### **(1) Assessment**

Not later than 1 year after August 3, 2007, the Secretary of Transportation shall complete an assessment of the safety and national security benefits achieved under existing requirements for route plans, in written or electronic format, for explosives and radioactive materials. The assessment shall, at a minimum—

(A) compare the percentage of Department of Transportation recordable incidents and the severity of such incidents for shipments of explosives and radioactive materials for which such route plans are required with the percentage of recordable incidents and the severity of such incidents for shipments of explosives and radioactive materials not subject to such route plans; and

(B) quantify the security and safety benefits, feasibility, and costs of requiring each motor carrier that is required to have a hazardous material safety permit under part 385 of title 49, Code of Federal Regulations, to maintain, follow, and carry such a route plan that meets the requirements of section 397.101 of that title when transporting the type and quantity of hazardous materials described in section 385.403, taking into account the various segments of the motor carrier industry, including tank truck, truckload and less than truckload carriers.

#### **(2) Report**

Not later than 1 year after August 3, 2007, the Secretary of Transportation shall submit a report to the appropriate congressional committees containing the findings and conclusions of the assessment.

### **(c) Requirement**

The Secretary shall require motor carriers that have a hazardous material safety permit

under part 385 of title 49, Code of Federal Regulations, to maintain, follow, and carry a route plan, in written or electronic format, that meets the requirements of section 397.101 of that title when transporting the type and quantity of hazardous materials described in section 385.403 if the Secretary determines, under the assessment required in subsection (b), that such a requirement would enhance security and safety without imposing unreasonable costs or burdens upon motor carriers.

(Pub. L. 110-53, title XV, §1553, Aug. 3, 2007, 121 Stat. 472.)

#### **§ 1204. Motor carrier security-sensitive material tracking**

##### **(a) Communications**

###### **(1) In general**

Not later than 6 months after August 3, 2007, consistent with the findings of the Transportation Security Administration's hazardous materials truck security pilot program, the Secretary, through the Administrator of the Transportation Security Administration and in consultation with the Secretary of Transportation, shall develop a program to facilitate the tracking of motor carrier shipments of security-sensitive materials and to equip vehicles used in such shipments with technology that provides—

(A) frequent or continuous communications;

(B) vehicle position location and tracking capabilities; and

(C) a feature that allows a driver of such vehicles to broadcast an emergency distress signal.

###### **(2) Considerations**

In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for motor carrier or security-sensitive materials tracking at the Department of Transportation;

(B) take into consideration the recommendations and findings of the report on the hazardous material safety and security operational field test released by the Federal Motor Carrier Safety Administration on November 11, 2004; and

(C) evaluate—

(i) any new information related to the costs and benefits of deploying, equipping, and utilizing tracking technology, including portable tracking technology, for motor carriers transporting security-sensitive materials not included in the hazardous material safety and security operational field test report released by the Federal Motor Carrier Safety Administration on November 11, 2004;

(ii) the ability of tracking technology to resist tampering and disabling;

(iii) the capability of tracking technology to collect, display, and store information regarding the movement of shipments of security-sensitive materials by commercial motor vehicles;

(iv) the appropriate range of contact intervals between the tracking technology and a commercial motor vehicle transporting security-sensitive materials;

(v) technology that allows the installation by a motor carrier of concealed electronic devices on commercial motor vehicles that can be activated by law enforcement authorities to disable the vehicle or alert emergency response resources to locate and recover security-sensitive materials in the event of loss or theft of such materials;

(vi) whether installation of the technology described in clause (v) should be incorporated into the program under paragraph (1);

(vii) the costs, benefits, and practicality of such technology described in clause (v) in the context of the overall benefit to national security, including commerce in transportation; and

(viii) other systems and information the Secretary determines appropriate.

##### **(b) Funding**

From the amounts appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

(1) \$7,000,000 for fiscal year 2008 of which \$3,000,000 may be used for equipment;

(2) \$7,000,000 for fiscal year 2009 of which \$3,000,000 may be used for equipment; and

(3) \$7,000,000 for fiscal year 2010 of which \$3,000,000 may be used for equipment.

##### **(c) Report**

Not later than 1 year after the issuance of regulations under subsection (a), the Secretary shall issue a report to the appropriate congressional committees on the program developed and evaluation carried out under this section.

##### **(d) Limitation**

The Secretary may not mandate the installation or utilization of a technology described under this section without additional congressional authority provided after August 3, 2007.

(Pub. L. 110-53, title XV, §1554, Aug. 3, 2007, 121 Stat. 473.)

#### **§ 1205. Hazardous materials security inspections and study**

##### **(a) In general**

The Secretary of Transportation shall consult with the Secretary to limit, to the extent practicable, duplicative reviews of the hazardous materials security plans required under part 172, title 49, Code of Federal Regulations.

##### **(b) Transportation costs study**

Within 1 year after August 3, 2007, the Secretary of Transportation, in conjunction with the Secretary, shall study to what extent the insurance, security, and safety costs borne by railroad carriers, motor carriers, pipeline carriers, air carriers, and maritime carriers associated with the transportation of hazardous materials are reflected in the rates paid by offerors of such commodities as compared to the costs and rates,

respectively, for the transportation of non-hazardous materials.

(Pub. L. 110-53, title XV, §1555, Aug. 3, 2007, 121 Stat. 475.)

#### **§ 1206. Use of transportation security card in hazmat licensing**

##### **(1) Background check**

An individual who has a valid transportation employee identification card issued by the Secretary under section 70105 of title 46 shall be deemed to have met the background records check required under section 5103a of title 49.

##### **(2) State review**

Nothing in this section prevents or preempts a State from conducting a criminal records check of an individual that has applied for a license to operate a motor vehicle transporting in commerce a hazardous material.

(Pub. L. 110-53, title XV, §1556(b), Aug. 3, 2007, 121 Stat. 475.)

#### **§ 1207. Pipeline security inspections and enforcement**

##### **(a) In general**

Not later than 9 months after August 3, 2007, consistent with the Annex to the Memorandum of Understanding executed on August 9, 2006, between the Department of Transportation and the Department, the Secretary, in consultation with the Secretary of Transportation, shall establish a program for reviewing pipeline operator adoption of recommendations of the September 5, 2002, Department of Transportation Research and Special Programs Administration's Pipeline Security Information Circular, including the review of pipeline security plans and critical facility inspections.

##### **(b) Review and inspection**

Not later than 12 months after August 3, 2007, the Secretary and the Secretary of Transportation shall develop and implement a plan for reviewing the pipeline security plans and an inspection of the critical facilities of the 100 most critical pipeline operators covered by the September 5, 2002, circular, where such facilities have not been inspected for security purposes since September 5, 2002, by either the Department or the Department of Transportation.

##### **(c) Compliance review methodology**

In reviewing pipeline operator compliance under subsections (a) and (b), risk assessment methodologies shall be used to prioritize risks and to target inspection and enforcement actions to the highest risk pipeline assets.

##### **(d) Regulations**

Not later than 18 months after August 3, 2007, the Secretary and the Secretary of Transportation shall develop and transmit to pipeline operators security recommendations for natural gas and hazardous liquid pipelines and pipeline facilities. If the Secretary determines that regulations are appropriate, the Secretary shall consult with the Secretary of Transportation on the extent of risk and appropriate mitigation measures, and the Secretary or the Secretary of

Transportation, consistent with the Annex to the Memorandum of Understanding executed on August 9, 2006, shall promulgate such regulations and carry out necessary inspection and enforcement actions. Any regulations shall incorporate the guidance provided to pipeline operators by the September 5, 2002, Department of Transportation Research and Special Programs Administration's Pipeline Security Information Circular and contain additional requirements as necessary based upon the results of the inspections performed under subsection (b). The regulations shall include the imposition of civil penalties for noncompliance.

##### **(e) Funding**

From the amounts appropriated pursuant to section 114(w) of title 49, there shall be made available to the Secretary to carry out this section—

- (1) \$2,000,000 for fiscal year 2008;
- (2) \$2,000,000 for fiscal year 2009; and
- (3) \$2,000,000 for fiscal year 2010.

(Pub. L. 110-53, title XV, §1557, Aug. 3, 2007, 121 Stat. 475.)

#### **§ 1208. Pipeline security and incident recovery plan**

##### **(a) In general**

The Secretary, in consultation with the Secretary of Transportation and the Administrator of the Pipeline and Hazardous Materials Safety Administration, and in accordance with the Annex to the Memorandum of Understanding executed on August 9, 2006, the National Strategy for Transportation Security, and Homeland Security Presidential Directive-7, shall develop a pipeline security and incident recovery protocols plan. The plan shall include—

(1) for the Government to provide increased security support to the most critical interstate and intrastate natural gas and hazardous liquid transmission pipeline infrastructure and operations as determined under section 1207 of this title when—

- (A) under severe security threat levels of alert; or
- (B) under specific security threat information relating to such pipeline infrastructure or operations exists; and

(2) an incident recovery protocol plan, developed in conjunction with interstate and intrastate transmission and distribution pipeline operators and terminals and facilities operators connected to pipelines, to develop protocols to ensure the continued transportation of natural gas and hazardous liquids to essential markets and for essential public health or national defense uses in the event of an incident affecting the interstate and intrastate natural gas and hazardous liquid transmission and distribution pipeline system, which shall include protocols for restoring essential services supporting pipelines and granting access to pipeline operators for pipeline infrastructure repair, replacement, or bypass following an incident.

##### **(b) Existing private and public sector efforts**

The plan shall take into account actions taken or planned by both private and public en-

titles to address identified pipeline security issues and assess the effective integration of such actions.

**(c) Consultation**

In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Transportation, interstate and intrastate transmission and distribution pipeline operators, nonprofit employee organizations representing pipeline employees, emergency responders, offerors, State pipeline safety agencies, public safety officials, and other relevant parties.

**(d) Report**

**(1) Contents**

Not later than 2 years after August 3, 2007, the Secretary shall transmit to the appropriate congressional committees a report containing the plan required by subsection (a), including an estimate of the private and public sector costs to implement any recommendations.

**(2) Format**

The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(Pub. L. 110-53, title XV, § 1558, Aug. 3, 2007, 121 Stat. 476.)

**CHAPTER 5—BORDER INFRASTRUCTURE AND TECHNOLOGY MODERNIZATION**

Sec.	
1401.	Definitions.
1402.	Port of Entry Infrastructure Assessment Study.
1403.	National Land Border Security Plan.
1404.	Port of entry technology demonstration program.
1405.	Authorization of appropriations.

**§ 1401. Definitions**

In this chapter:

**(1) Commissioner**

The term “Commissioner” means the Commissioner of U.S. Customs and Border Protection of the Department of Homeland Security.

**(2) Maquiladora**

The term “maquiladora” means an entity located in Mexico that assembles and produces goods from imported parts for export to the United States.

**(3) Northern border**

The term “northern border” means the international border between the United States and Canada.

**(4) Secretary**

The term “Secretary” means the Secretary of the Department of Homeland Security.

**(5) Southern border**

The term “southern border” means the international border between the United States and Mexico.

(Pub. L. 110-161, div. E, title VI, § 602, Dec. 26, 2007, 121 Stat. 2094.)

**SHORT TITLE**

Pub. L. 110-161, div. E, title VI, § 601, Dec. 26, 2007, 121 Stat. 2094, provided that: “This title [enacting this chapter] may be cited as the ‘Border Infrastructure and Technology Modernization Act of 2007’.”

**§ 1402. Port of Entry Infrastructure Assessment Study**

**(a) Requirement to update**

Not later than January 31 of every other year, the Commissioner, in consultation with the Administrator of General Services shall—

(1) review—

(A) the Port of Entry Infrastructure Assessment Study prepared by the United States Customs Service, the Immigration and Naturalization Service, and the General Services Administration in accordance with the matter relating to the ports of entry infrastructure assessment set forth in the joint explanatory statement on page 67 of conference report 106-319, accompanying Public Law 106-58; and

(B) the nationwide strategy to prioritize and address the infrastructure needs at the land ports of entry prepared by the Department of Homeland Security and the General Services Administration in accordance with the committee recommendations on page 22 of Senate report 108-86, accompanying Public Law 108-90;

(2) update the assessment of the infrastructure needs of all United States land ports of entry; and

(3) submit an updated assessment of land port of entry infrastructure needs to the Committees on Appropriations of the Senate and the House of Representatives, the Senate Committee on Environment and Public Works, the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Transportation and Infrastructure, and the House Committee on Homeland Security.

**(b) Consultation**

In preparing the updated studies required under subsection (a), the Commissioner and the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and affected State and local agencies on the northern and southern borders of the United States.

**(c) Content**

Each updated study required in subsection (a) shall—

(1) identify port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented;

(2) include the projects identified in the National Land Border Security Plan required by section 1403 of this title; and

(3) prioritize the projects described in paragraphs (1) and (2) based on the ability of a project—

(A) to enhance the ability of U.S. Customs and Border Protection to achieve its mission and to support operations;

(B) to fulfill security requirements; and

(C) facilitate trade across the borders of the United States.